

CONSTITUTIONAL DEVELOPMENT
OF VICTORIA, 1837-8

EDWARD DWELLMAN

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CONSTITUTIONAL DEVELOPMENT
OF VICTORIA, 1851-6.

Constitutional Development of Victoria

1851—6

By

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With an

INTRODUCTION

by

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INTRODUCTION.

The Colony of Victoria was established by separation from New South Wales on 1st July, 1851, under the provisions of 13 and 14 Vict. C. 59. It received a Constitution similar to that which had been in force in the Mother-Colony since 1842, viz.: a Legislative Council, as to one-third nominated by the Crown, and as to two-thirds elected by the people of the Colony, but with an Executive appointed by and responsible to the Crown. The Legislature exercised the sole taxing power in the Colony, but a considerable part of the revenue was derived from the sale or leasing of Crown lands, and from other prerogative rights in the lands. This revenue, as well as the lands themselves, was disposed of by the Executive under powers derived not from the Legislative Council, but from the Crown under the authority of Imperial legislation. On 23rd November, 1855, a new Constitution under an Imperial Act, 18 and 19 Vict. C. 55, came into operation, and with it "Responsible Government" was established. The principal executive officers were appointed by the Governor, and became responsible to the local Legislature; subordinate officers and the judiciary were appointed by the Governor on the advice of his Executive, and were governed by local legislation. The Territorial revenue and the disposition of the lands of the Colony came under the control of the new Legislative Council and Legislative Assembly. In other words, the Colony passed under the regime of self-government so far as its internal and domestic affairs were concerned.

It is commonplace that this change was effected partly indeed by changes in the law, but partly also—and in respect to its most distinctive characteristic, the responsibility of the Executive to the

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Legislature, mainly—by the adoption of new practices based upon the acceptance of constitutional conventions. The present essay is a survey of the four years of “representative institutions,” with a view to ascertaining how far the ground was, during those years, being prepared for the change by the practice of government and the relations of the Executive and the Legislature. What were the relations between the Governor and his principal executive officers? How far did they collectively form a body of advisers determining policy? To what extent was the Executive Council a council of officials? How far was it the practice to include officials or Executive Councillors among the nominee members of the Legislative Council? Did the Executive Councillors or the officials in the Legislative Council act collectively as does a Ministry, or separately as do individual members? Had those nominee members of the Council, who were neither officials nor Executive Councillors, freedom of action, or were they a “Government party” expected to support the Executive? Did the Executive “lead the House”? Did the Legislative Council, in addition to making laws and imposing taxes, claim to criticize the general administration? Were “votes of censure” known? Was a general Budget laid before the Legislative Council, so as to enable it to review the whole expenditure of government, including the part of the expenditure which it did not directly control? Were there any cases in which appointments to the Executive Council were made with a view to securing the support of the Legislative Council, or any in which a man ceased to hold office, or to be a member of the Executive Council, or was removed from the Legislative Council, in deference to the opinion of that Council? In making appointments to the Executive Council, did the Governor ever make a choice from the elected members of the Legislative Council?

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Mr. Sweetman's careful examination of the records, and of the political history of the brief period under review, clearly establishes that a rapid approximation to a Parliamentary system was taking place, so that the formal introduction of responsible government in 1855 was more the removal of hindrances to control than a new condition attained *per saltum*. The essay is thus a contribution to the evolutionary character of our institutions—formal change is made only after a preparatory stage of practice and experience, which makes the change itself a part of development.

W. HARRISON MOORE.

PREFACE.

The subject matter of this book is the investigation of certain problems connected with the constitutional development of Victoria, between 1851 and 1856. Most of the subjects investigated were suggested to me by Professor H. Moore, LL.D., C.M.G. (School of Law), and by Professor E. Scott (School of History), University of Melbourne, as needing either solution or amplification by means of research work. With both these objects in view, I consulted State papers, original documents, files of early newspapers and rare political pamphlets, as well as certain well-known historical works dealing with the early constitutional history of Australia. Full references to these sources of information will be found, as a rule, at the foot of each page. To both Professors Moore and Scott, I am much indebted for the suggestions and guidance which they gave me during the course of my investigation.

The topics dealt with fall broadly into three divisions: (a) The Origin of Responsible Government in Victoria; (b) The Executive and the Legislative Council of Victoria, 1851 to 1856; their origin, character and development; (c) Some constitutional struggles in the Legislative Council, 1851-6. Complete lists of the members of the Legislative Council, and of Victoria's first Parliament, have been added for the sake of reference, and to make the exposition of certain chapters as clear as possible.

Though the book deals with Victorian constitutional history as its main subject, portions of it concern the constitutional histories of New South Wales, Van Diemen's Land and South Australia. Lord Durham's Report, presented to the British Parliament early in 1839, not only profoundly in-

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fluenced the future of Canada, but also produced marked effects upon the political life of the Australian colonies. By June, 1839, Lord Durham's Report was receiving wide publicity in the Sydney newspapers; its recommendation to grant Responsible Government to Canada won warm supporters to that doctrine in New South Wales. Soon after the publication of Lord Durham's Report in Sydney, the Governor, Sir George Gipps, declared in the Legislative Council that every man would do well to read it.

The origin and history of the "Blended House"—the Legislative Council—in connection with the penal character of New South Wales, have an interest affecting not only that colony, but also Victoria, Van Diemen's Land and South Australia. This type of Legislature was in vogue in all four colonies; its genesis and history are unique in the annals of British Colonial possessions.

In quite as striking a manner, the contest which the Victorian Legislative Council carried on with the Home Government over the *Convicts Prevention Act*, claims a distinct place in Colonial constitutional history. In this dispute the law of self-preservation clashed with one of the Crown's prerogatives, and finally triumphed. A marked feature in connection with this and other constitutional struggles which took place between the Legislatures of New South Wales and Victoria, and the Home Government, in the years 1851 to 1856, was the conciliatory spirit shown by the Home Government towards the requests of these colonies. The enlightened policy which the Home Government carried out with regard to the Australian colonies at this period, was admirably expressed by Lord John Russell when he said: "I delight in observing the imitation of our free institutions in colonies at a distance from the palace at Westminster."

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I am much indebted to Professor Moore for his introduction to this book, the contents of which result largely from the encouragement which he gave me to persevere until each subject had been thoroughly investigated. Ready and liberal assistance was given to me in my search for despatches and other papers, by Mr. Wadsworth, Librarian at the Commonwealth Parliament; by Mr. Mabbott, Clerk of the Executive Council, Treasury Buildings; and by the staff of the Melbourne Public Library. From my sister, Miss S. K. Sweetman, B.A. (Essendon High School), and Mr. R. Lawson, M.A. (Teachers' College), I received generous help in checking my manuscript. To each of those who so kindly assisted me in the production of this book, I desire gratefully to acknowledge my indebtedness.

EDWARD SWEETMAN.

Teachers' College,

Melbourne,

September 1st, 1920.

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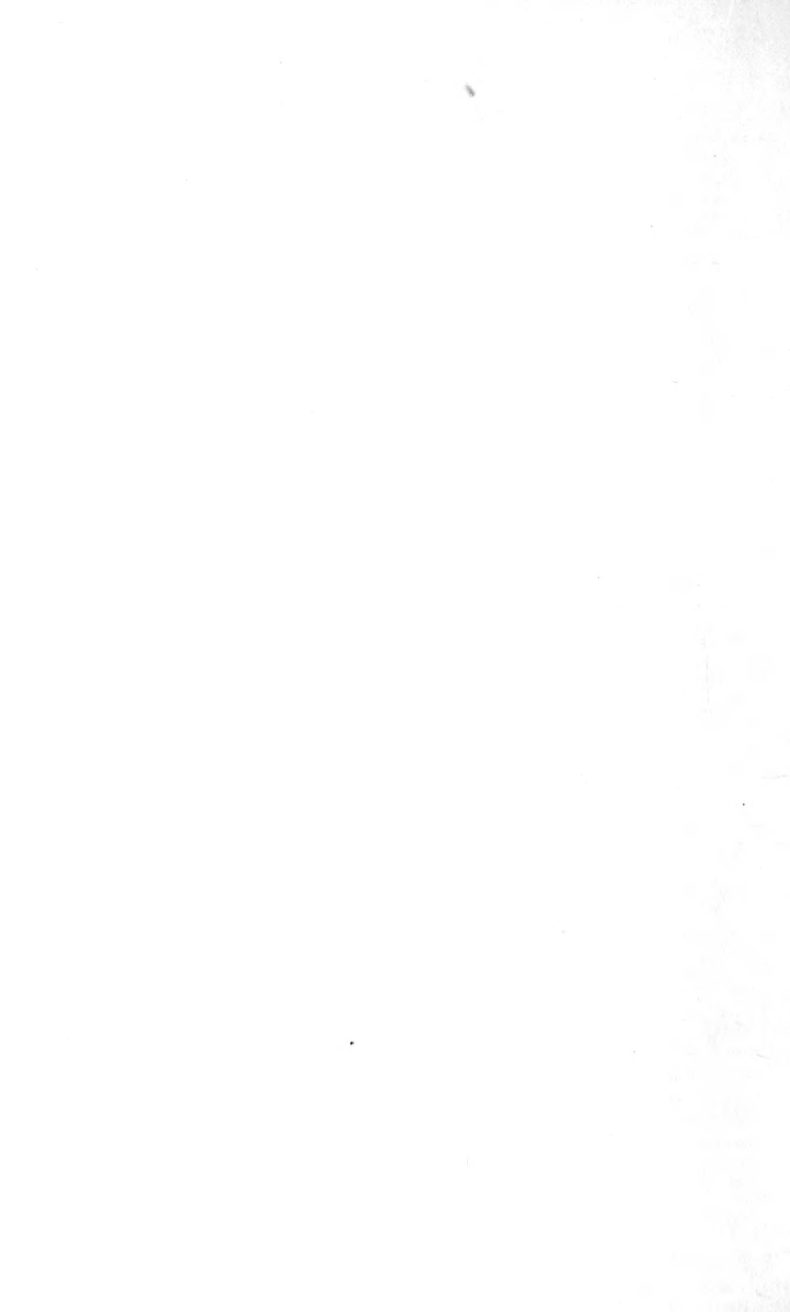
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PART I.

THE ORIGIN OF RESPONSIBLE GOVERN-
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CHAPTER I.

EVENTS PRECEDING THE PREPARATION OF THE NEW CONSTITUTION.

When the Port Phillip District was first settled in 1835, it was a part of the Colony of New South Wales. At that time New South Wales was governed under the provisions of the ¹Act of 1828, by virtue of which the Governor was assisted by a wholly nominated Council, over whose meetings it was his duty to preside; this Council made the laws for the government of New South Wales. Between the years 1828 and 1842, there was no change in this form of administration, though agitations for alterations in the constitution of the Colony arose, not only in Sydney, but also in the Port Phillip District. It is really in connection with the first definite movement in the Port Phillip District for separation from New South Wales that we get a distinct request from the colonists of Port Phillip for the establishment of a Responsible Government in Melbourne.

Even before the year 1840, the settlers of Port Phillip had an outstanding grievance against the Government at Sydney. This was over the appropriation of that portion of the Land Sales revenue which was derived from the Port Phillip District, but used mainly to meet labor needs in connection with Sydney. This grievance was aggravated by the fact that the colonists of Port Phillip were also suffering from scarcity of labor, though there was a considerable number of convicts in the District. Hence, a strong desire was created amongst the colonists of Port Phillip to sever connection with New South Wales and secure a Government of their own, in order to remedy grievances and ad-

¹A modified form of the New South Wales Judicature Act of 1823.

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minister affairs locally. As early as ²October 1st, 1838, Governor Gipps wrote from Sydney to Lord Glenelg, the Colonial Secretary, with reference to the scarcity of labor in the Port Phillip District. He acknowledged that, though his lordship had asked him to limit the number of convicts in Port Phillip as much as possible, he had been unable to prevent a considerable number being taken to the District. Nevertheless, labor there was very scarce; he therefore made suggestions for sending out two ships to Port Phillip with farm laborers and artisans. At the same time, he expressed the opinion to Lord Glenelg that, if it had been intended to prevent altogether the assignment of convicts to the Port Phillip District, it would have been better to have given it a separate Government.

At a public ³meeting held in Melbourne on May 5th, 1840, this despatch of Governor Gipps was quoted as an argument in support of certain proposals which the colonists of Port Phillip desired to place before the Home Government. It was well known in Port Phillip that changes in the constitution of New South Wales were contemplated by the Colonial Office, in response to petitions from that Colony for a representative Government, suited to its special conditions. At this meeting in Melbourne, a committee was appointed to prepare a petition for presentation to the Queen, and to both Houses of Parliament. It was to request the separation of the Port Phillip District from the Colony of New South Wales, the establishment of an independent Government, and a representative Legislature within the Province. On ⁴June 13th, the committee presented the petition at a very representative public meeting, held in the Scots School, Melbourne, where it was adopted, and afterwards

²"Port Phillip Herald," May 8th, 1840.

³"Port Phillip Herald," May 8th, 1840.

⁴"Ibid," June 16th, 1840.

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received numerous signatures. Amongst its warmest supporters were many of the most influential residents of Port Phillip, one of whom, Mr. Redmond Barry—afterwards Sir Redmond Barry, and one of the Judges of the Supreme Court of Victoria—took a prominent part in securing signatures to the petition. After setting out their grievances against the Government of New South Wales, the petitioners requested the British Parliament to obtain for them:—

1st. A "Responsible Government entirely separate from, and independent of, New South Wales;

2nd. A free and extended legislative representation, corresponding with the extent and population of the District, and equal to the exigencies of a free state.

Two committees were nominated at the public meeting on June 13th; one was composed entirely of residents of Port Phillip, the other, of several well-known local residents who were shortly to proceed to England, and of certain persons influential in British Parliamentary circles. The former committee was to keep in touch with the latter, the members of which were asked to use their influence towards securing the requests of the petitioners. Mr. H. F. Gisborne was entrusted with the petition, but he unfortunately died while on the voyage to England. The document then passed into the care of Major Mercer, who had acted as chairman at the public meeting in June, and who, along with Mr. Yaldwyn, a fellow colonist, had been placed on the

⁵On 14th May, 1829, Mr. Stanley (afterwards Earl of Derby) presented to the House of Commons a petition, which had been agreed to at a meeting held at Yorktown (Toronto), and signed by 2,110 inhabitants of Upper Canada. According to Stanley's speech in presenting the petition, he asked, among other points, for a "local responsible ministry." This is commonly held to be the first mention of the term "responsible government" which subsequently became so familiar. (Lord Durham's Report, edited by Sir C. P. Lucas, Vol. 1, page 137.)

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deputation selected to present the petition to the British Parliament.

Before we follow further the fate of the Port Phillip petition, we shall discuss the two definite requests mentioned in it. The first, asking for a Responsible Government, is certainly striking, though references to that subject had been brought prominently before the people of New South Wales in the previous year. The *Sydney Gazette*, of June 13th, 1839, contained a comprehensive outline of Lord Durham's Report, which made such definite proposals for the future government of Canada. In this article, Lord Durham's recommendation to grant Responsible Government to Canada was clearly set out, and the full text of the Report itself was published in sections by the same paper during the months of June, July, August and September. Other Sydney newspapers also gave this great State paper marked prominence and wide publicity. The *Port Phillip Patriot*, of July 18th, 1839, noted the fact that Lord Durham's Report had been laid before Parliament on February 11th. In the following year, on February 29th, Dr. Bland, the corresponding secretary of the "Australian Patriotic Association," in his letter from Sydney to Mr. C. Buller, Junr., M.P., freely discussed Lord Durham's Report. This letter was soon afterwards published by the Association, whose activities were well known to the residents of the Port Phillip District. Lord Durham's Report was therefore well known in Melbourne in July, 1839, and was frequently referred to in the newspapers of New South Wales.

It would be interesting to know precisely to what extent Lord Durham's Report influenced the colonists of Port Phillip to ask for a "responsible

*Mr. C. Buller accompanied Lord Durham to Canada in 1838. He became the Parliamentary agent for the "Australian Patriotic Association" after Mr. H. L. Bulwer's resignation, and was much interested in the political affairs of New South Wales.

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government." Mr. Redmond Barry, barrister-at-law, must have known of the famous Report, and it is not at all likely that he would ask people to sign a petition containing a vague and meaningless request. He must have been aware that the Port Phillip petition asked for the very thing Lord Durham had urged the Home Government to grant to Canada, namely, "responsible government." No mention of Durham's Report was made in the Port Phillip petition, but there can be little doubt that its influence upon those who drafted the petition caused them to insert the request for a Responsible Government.

The second request resembled the chief aim of the "Australian Patriotic Association" of New South Wales, hitherto denied a representative Government, because of the penal character of the Colony. The Port Phillip District, however, claimed to be a "free state," an assertion only partly true, for convicts did get into the District, which was not, however, a penal settlement. The words, "a free state," then, were inserted, as an additional argument for representative Government.

The petition containing these two requests was presented to Lord Stanley, the head of the Colonial Office, by Major Mercer and Mr. Yaldwyn, on September 13th, 1841. In a letter from Edinburgh, dated October-31st, Major Mercer sent Mr. Kerr, secretary of the separation committee at Port Phillip, an account of the interview with Lord Stanley. They had assured him that there could be but one opinion as to the rights of Port Phillip, either to have a separate Government, as requested, or to secure proper representation at the seat of Government. In reply, Lord Stanley remarked that he disapproved of the separation of the Port Phillip District from the rest of New South Wales, if it

"Port Phillip Herald," February 22nd, 1842.

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could be avoided; he was inclined to think that an extension of powers to the head of the Government at Port Phillip would be sufficient for the present wants of the District. Before closing the interview, Lord Stanley pointed out that he had not been long in office, but assured the two delegates that they could rely upon his giving the subject his best and most attentive consideration.

Other forces, however, had been at work in the Colonial Office before the Port Phillip petition reached Lord Stanley. In England, Mr. C. Buller, the Parliamentary Agent of the Australian Patriotic Association, acting in conjunction with Mr. James Macarthur, of Camden, New South Wales, who was then on a visit to England, drew up the rough draft of a constitution, which they considered suited to the conditions of New South Wales. This they forwarded to the Colonial Office, where it was received with favor. Some of its main provisions closely resembled those of the Act of 1842 (see chapter on the "Origin of the Blended House"), which altered the Constitution of New South Wales.

On April 28th, 1842, the Port Phillip petition reached the House of Commons. It was¹⁰ designated "A petition from Port Phillip for a Local Government independent of the Government of New South Wales, and for a Representative Legislature," and was presented to the House of Commons by Mr. Christopher, member for Lincolnshire. The petition was simply received; no discussion on it took place. About a month later, Lord Stanley moved the first

⁸"The Port Phillip Patriot" of August 1st, 1842, stated that a letter had been received from Mr. Yaldwyn, in England, in which he stated that there seemed to be no disposition on the part of the Downing Street authorities to grant the wishes of the Port Phillip petitioners. Mr. Macarthur had informed him that a Legislature composed of nominees of the Crown and elected members would be given to New South Wales. There would be no provision made in the new Act for the separation of the Port Phillip District from that colony.

⁹Vide "Port Phillip Patriot" and "Sydney Herald," December 2nd, 1839.

¹⁰Parliamentary Debates (Commons), Vol. LXII., p. 1178.

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reading of the New South Wales Bill, which in July became "*An Act for the Government of New South Wales and Van Diemen's Land*." Under the provisions of this Act, the Port Phillip District did not receive what the petition of June, 1840, had asked for; neither separation nor "responsible government," nor "a free and extended representation," fell to the lot of the Port Phillip District under the Act of 1842. Lord Stanley had intimated to the two delegates in the interview which he gave them in September, 1841, that he did not favor the separation of the Port Phillip District from New South Wales, and the Act of 1842 showed fully that the Port Phillip petition had failed to cause him to alter his opinion on the matter. Important changes, however, were made by the Act. The Legislative Council of New South Wales was to be no longer wholly nominated; two-thirds of the Council was to consist of elected representatives, and the remaining third, of nominees. Six of the elected representatives were allotted to the Port Phillip District. This scheme of representation for Port Phillip produced intense dissatisfaction in that District, and agitations and requests for separation from New South Wales became more frequent and more vehement.

The requests for separation drew from Earl Grey, on July 31st, 1847, the ¹²promise that Parliament should be recommended to impart to Her Majesty the authority necessary for carrying into effect the separation of the Port Phillip District from New South Wales. He was quite convinced, he said, that the Port Phillip representation had become unreal and illusory, and was not a substantial enjoyment of representative Government. He likewise stated that it was intended to revise the Con-

¹¹5 and 6 Vict., Cap. 76.

¹²Australian Constitution (Public Library), page 3, Earl Grey to Sir C. A. Fitzroy, Governor of New South Wales.

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stitution of New South Wales, and to return to the old form of Colonial Government, *i.e.*, two separate Houses—the Upper House a nominated one, and the Lower elective. The municipalities were also to be given due weight and consideration, so that they might be made to bear to the House of Assembly the relation of constituents to representatives. The proposal to ¹³abolish the single-blended House, and make the municipalities something like the ¹⁴Electoral Colleges in France, received very strong opposition in New South Wales. The colonists of the ¹⁵Port Phillip District also protested against these Constitutional changes, which were sought to be made on the occasion of the separation of their District from New South Wales. They condemned the proposed new Constitution and form of Government as being experimental and abridging their natural rights as British subjects.

Earl Grey did not proceed further with the changes protested against, but in his ¹⁶despatch to Governor Fitzroy, on July 31st, 1848, he set forth an outline of the measures he was prepared to recommend to the Home Government. He stated that there was to be no change in the composition or authority of the Legislative Council of New South Wales, beyond such as would be the necessary consequence of separation. There would also be established in Port Phillip a Legislature, similar

¹³Australian Constitution, p. 29, Sir C. A. Fitzroy to Earl Grey, February 2nd, 1848.

¹⁴Australian Constitution, p. 30. The "Sydney Morning Herald" January 21st, 1848, reported the speech made by the Mayor of Sydney on this subject. In one portion of it he said, "It would be indeed a piece of class legislation, disastrous in its results. The legislators of the country were to be elected only by the electors for the District Councils, whilst the right of representation by the members of their own choice would be taken from the people altogether." At this meeting Mr. W. C. Wentworth spoke on the same topic. He felt sure, he said, that the proposed legislation, if passed, would result in the same spirit of unrestrained bribery and corruption which existed in France, where the members of the Legislature were elected by the Electoral colleges, instead of by the mass of the people. (p. 39).

¹⁵Australian Constitution, enclosure 3, p. 55; Sir C. A. Fitzroy to Earl Grey, March 27th, 1848.

¹⁶Australian Constitution, p. 45; Earl Grey to Sir C. A. Fitzroy.

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in character to that which then existed in New South Wales. But as this form of Government, while on the whole it might be best adapted to the existing circumstances, was one which might admit of much modification and improvement, under the suggestion of experience, and because he considered the Australian communities fully competent to originate and discuss for themselves any change in their Constitution, he further contemplated advising that their several Legislatures should have the power to "recommend such alterations in their own Constitutions as they might deem expedient. These changes would, however, be subject to the assent of the Home Government.

While the proposals of Earl Grey were under discussion in the British Parliament, the colonists of Port Phillip, on ¹⁸July 27th, 1848, elected him as their representative member in the Legislative Council of New South Wales. In a ¹⁹memorial sent by the Port Phillip residents to Earl Grey, on September 23rd, 1848, concerning the question of their representation at Sydney, they candidly stated that the present system was almost worthless to their community; the elections were commonly spoken of as "The Port Phillip Farce." Of the truth of this saying, the election of Earl Grey himself was a very pointed example. This action by the Port Phillip colonists caused Superintendent La Trobe to ²⁰write

¹⁷In Earl Grey's "Colonial Policy of Lord John Russell's Administration, 1853," Vol. 2, p. 95, we find the following:—"In our opinion, it was improper that the power of the colonies to adapt their institutions to the changes of the circumstances which are taking place so rapidly should be thus restricted. In our old colonies, the constitutions of which were originally granted by Charters from the Crown, there is no restriction on the power of the local Legislatures to effect, with the concurrence of the Crown, the reforms which may be found necessary. We saw no reason why a different rule should be applied to Australia; we therefore introduced into the Bill clauses investing the Legislative Councils with the most ample power of amending the constitutions thus granted."

¹⁸Australian Constitution, p. 71.

¹⁹Australian Constitution, p. 72.

²⁰Accounts and Papers, 1849, Vol. XXXV., p. 25.

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to Governor Fitzroy on August 10th, 1848, and denounce the election as being "impolitic, improper and absurd." La Trobe also declared to Governor Fitzroy that, with regard to the future government of the Port Phillip District, any form of Constitution which would take the Government out of the hands of the Governor, Executive, and Nominee Council, and substitute, for the last-named, a representative body, would be ill-suited for its real state and position, and would render the administration of its Government an exceedingly difficult and responsible task. With La Trobe's opinions, Governor Fitzroy expressed entire ²¹concurrence, and particularly with his views that it was inexpedient to erect Port Phillip into a separate Colony, and grant it a representative Legislature. But, by this time, definite steps were being taken in the British Parliament to bring about the promised separation of the Port Phillip District.

The Committee for Trade and Foreign Plantations was asked by the Home Government to act as a deliberative body, and to consider the question of the Constitution of New South Wales, and the separation of the Port Phillip District. On ²²May 4th, 1849, the report of that Committee was read at Buckingham Palace, and, while desirous of introducing the old system of Colonial Government, namely, a Governor, a Council, and an Assembly, yet, in view of the public opposition in New South Wales to two Houses, they recommended the continuance of the one House with nominees and electives. They proposed to grant to the southern districts of New South Wales their long and

²¹Australian Constitution, p. 71, September 23rd, 1848; Governor Sir C. A. Fitzroy to Earl Grey.

²²Australian Constitution, p. 83. The report also recommended that one of the Governors of the Australian Colonies should hold a commission constituting him the Governor-General of Australia. Such a commission was issued to Sir C. A. Fitzroy, Governor of New South Wales, on January 13th, 1851.

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earnestly solicited request that Melbourne should be made the seat and centre of a Colonial Government separated from that of Sydney. These recommendations were embodied in the *Act for the Better Government of Her Majesty's Australian Colonies*, which received the Royal assent on ²³August 5th, 1850, and was transmitted to the Governor of New South Wales, Sir Charles Fitzroy, on the 30th of the same month.

The ²⁴Act of 1850 not only erected the Port Phillip District into what was now called the Colony of Victoria, in honor of Queen Victoria, but also conferred on the new Colony a Constitution similar to that which had existed for New South Wales since 1842. A most noteworthy section of the 1850 Act was the 32nd. This made it lawful for the Governors and Councils of the Colonies to alter the Constitutions of their respective Legislative Councils, subject to the consent of Her Majesty-in-Council. When the British Parliament was discussing the Act of 1850, ²⁵something was said within the House concerning Responsible Government, and much more outside, but this was not made the subject of express legislation. Still, there were few people who doubted that Responsible Government must, sooner or later, be the complement of the partly representative Government, and of the powers furnished to the Australian colonists, under the 32nd Section of the Act of 1850.

By a ²⁶despatch, dated September 14th, 1850, Superintendent La Trobe, who had been at the head

²³13 and 14 Vict., Cap. 59.

²⁴In the "Illustrated Australian Magazine," 1850, Vol. 1, p. 375, a correspondent, who signed himself "V.V.," stated that his friend, Dr. McCrae had favored him with a perusal of the original separation petition. It was in the handwriting of a Mr. H. F. Gisborne. "At the present time (1850)," said the writer, "this document is particularly interesting."

²⁵"Colonies and Constitutions, embracing a Concise Statement of the Principles of the Australian Bill," by J. H. Jackson, Launceston, October, 1850.

²⁶Australian Constitution, p. 301; Earl Grey to Sir C. A. Fitzroy.

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of the Port Phillip Administration since 1839, was appointed the first Lieutenant-Governor of the new Colony of Victoria. Early in the following year, ²⁷Sir C. A. Fitzroy, the Governor of New South Wales, was appointed Governor-General of all Her Majesty's Australian possessions, including Western Australia. The writs for the first election of members to serve in the Legislative Council of Victoria were issued on July 1st, 1851, and the *New South Wales Gazette* of that date contained a proclamation concerning these writs, whereby the territories hitherto comprised within the Port Phillip District were created a separate Colony.

Under Section ii. of the 1850 Act, one-third of the new Victorian Legislature was to consist of nominees, and two-thirds of electives; Section iii. of the same Act empowered the Legislature of New South Wales to apportion the number of members for the first Victorian Legislature. They fixed the number at thirty—ten nominees and twenty electives. On November 11th, 1851, the Legislative Council of Victoria met for the first time. The following were the nominees, official and unofficial, who were appointed by Lieut.-Governor La Trobe on October 31st, 1851:—

²⁸*Official Nominees, i.e., those holding office—*

William Lonsdale, Esq., Colonial Secretary.
William Foster Stawell, Esq., Attorney-General.
Charles Hotson Ebdon, Esq., Auditor-General.
Redmond Barry, Esq., Solicitor-General.
Robert Williams Pohlman, Esq., Master-in-Equity.

²⁷Australian Constitution, p. 302; Earl Grey to Sir C. A. Fitzroy. Though the position was looked upon as more or less nominal, still the instructions to the Governor-General ran: "But you will understand that if such a necessity should arise, you would, by virtue of the Queen's commission to you, assume the government of any of those colonies in which you might be present, and retain it during the whole period of your residence. During such period the functions of the Lieut.-Governor would be completely suspended." (p. 303).

²⁸Official nominees were appointed provisionally by the Lieut.-Governor under powers delegated to him by Her Majesty on December 31st, 1850. (See Australian Constitution, p. 380). The Colonial Office had the power to reject any of the appointments.

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Unofficial Nominees, i.e., those holding no office—

Charles James Griffiths, Esq.
Alexander Cunninghame Wallis Dunlop, Esq.
William Clarke Haines, Esq.
James Hunter Ross, Esq.
Andrew Russell, Esq.

The following were the *Elective Representatives*:—

William Westgarth	James Ford Strachan
William Rutledge	Thomas Wilkinson
James Stewart Johnston	John Henry Mercer
Peter Snodgrass	Francis Murphy
John Thomas Smith	James Frederick Palmer
Robert Robinson	Henry Miller
Adolphus Goldsmith	John O'Shanassy
William Francis Splatt	John Pascoe Fawcner
Robert Turnbull	William Campbell
Charles Hilton Dight	Thomas Hamilton Osborne

While the colonists of Victoria were rejoicing over their new political privileges and freedom from Sydney, by virtue of the Act of 1850, that measure met with a very different reception at the hands of the Legislative Council in New South Wales. Before examining the attitude of the New South Wales Legislature towards the Act of 1850, we may here further notice the influence of the famous Report, which was completed by Lord Durham in January, 1839, after his short and troubled stay in Canada, whither he had been sent as High Commissioner in 1838. His Report had not only a profound effect upon the future government of Canada, but as Sir C. P. Lucas says, "He gave to the world the doctrine of Responsible Government, not as a prelude to the creation of separate peoples, but as a corner-stone, upon which a single and undivided British Empire should be reared to abiding strength." When Lord Durham's Report went out to the world, its doctrines found a warm supporter in one whose name stands high in the political his-

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tory of Australia—the name of ²⁹William Charles Wentworth—for many years a prominent member of the New South Wales Legislative Council. Sir Henry Parkes, in writing of Wentworth in his book, "Fifty Years in the ³⁰Making of Australian History," says that Wentworth was saturated with Lord Durham's Report on the constitutional grievances of Canada, and began to move in the cause of a fuller system of self-government for New South Wales, in order to secure freedom from Downing Street.

To the course of action taken by the Legislative Council in Sydney, and the part Wentworth played therein, we must now turn with particular care, for we are approaching a most critical time in the political history, not merely of New South Wales, but, indeed, of all Australia. Though the Act of 1850 gave the colonists of Victoria ample reason to rejoice, in that it brought to them a Government of their own, yet that same Act gave to the Legislative Council of New South Wales very small grounds for satisfaction, apart from the 32nd section. For years before, strenuous efforts had been made by that body to secure freedom from what they considered to be the tyranny of the British Parliament, over such questions as those concerning the Waste Lands, the Territorial revenue, and the vetoing of Bills. The Act of 1850 brought, they said, no redress concerning these matters. On ³¹April 8th, 1851, a Select Committee was appointed, at the instance of Mr. Wentworth, to prepare a Remonstrance against the Act of 1850. On the 29th of the same month, it was brought up and carried by eighteen votes to

²⁹Mr. W. C. Wentworth was also a Vice-President of "The Australian Patriotic Association." He was not the earliest champion of "Responsible Government" in Australia; that honor belongs to Dr. Bland, another prominent member of the A.P. Association. See "Report of Proceedings at the National Banquet held to celebrate the establishment and inauguration of Responsible Government in New South Wales," p. 4, by R. Thompson.

³⁰Vol. 1, p. 27.

³¹Official History of New South Wales, p. 175

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eight. In this ³²Remonstrance, which was forwarded to the Secretary of State for the Colonies, through Sir Charles Fitzroy, the Legislative Council stated that they felt it to be a duty which they owed to themselves and posterity, before they gave way to the new Legislature established by the Act of 1850, to record their deep disappointment and dissatisfaction at the Constitution conferred by this Act on their Colony. They felt, they asserted, that, on the eve of the dissolution of the Council, and as the closing act of their legislation, no other course was open to them, but to enter, on their own journals, their Remonstrance against the new Constitution Act of 1850. They protested against—

- (a) The schedules appended to the new Constitution, and the appropriation of their ordinary revenue under the sole authority of Parliament;
- (b) The administration of their Waste Lands and the Territorial revenue thence arising, by the Home Government;
- (c) The Customs and all other departments not being subject to the direct supervision and control of the Colonial Legislature;
- (d) The dispensation of the patronage of the Colony at the dictation of the Minister for the Colonies;
- (e) The veto reserved and exercised by the same Minister, in the name of the Crown, in matters of local legislation.

They bequeathed to the Legislature, by which they were to be succeeded, the redress of their grievances, which they had been unable to effect by constitutional means. This Remonstrance bore the date of May 1st, 1851, and was signed by Charles Nicholson, Speaker.

³²Australian Constitution, pp. 340-1, June 18th, 1851; Governor-General Sir C. A. Fitzroy to Earl Grey.

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³³Early in December, the succeeding Legislature drew up a petition affirming the Remonstrance of the preceding Legislature, stating that they felt it their solemn duty to Her Majesty and to their fellow countrymen to declare that it would be impossible much longer to maintain the authority of a local Executive, which was obliged by its instructions to refer, for the decision of an inexperienced, remote, and irresponsible department, all measures of importance, no matter how great the urgency of their immediate adoption. The petition then made a noteworthy proposal, which the Legislative Council of New South Wales considered would deprive Her Majesty's confidential advisers of any excuse for the continuance of the abuses complained of. It declared that the Legislative Council of New South Wales was prepared, upon the surrender to that body of the entire management of all the Colony's revenues, ³⁴Territorial as well as General, and upon the establishment of a Constitution similar in its outline to that of ³⁵Canada, to assume and provide for the whole cost of its internal Government, and to grant to Her Majesty an adequate Civil List on the same terms as in Canada, instead of the sums appropriated in the schedules of the Imperial Act of 1850.

The Governor-General enclosed the petition in his ³⁶despatch of January 15th, 1852, and stated that it was his conviction, that the desire to have a Constitution conferred on the Colony, agreeing in its principles with that applied for in the petition, was

³³Australian Constitution, pp. 351-3, December 5th, 1851.

³⁴The Territorial revenue was derived from the sale of Crown Lands in the Colony. The General revenue was received from taxes, duties, rates and imposts levied within the Colony.

³⁵Canada had two Houses—Upper House nominated by the Governor, and Lower House elected upon a low franchise. Upon retaining a majority in the Lower House depended the existence of the Ministry. The Lower House could stop supplies, and insist upon the Governor's changing his advisers. The doctrine of Responsible Government was well established in Canada.

³⁶Australian Constitution, pp. 350-1.

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not confined to the Legislative Council alone, but was supported by the general opinion of the most loyal, respectable, and influential members of the community. He rather pointedly expressed the opinion that to prolong the contest would weaken the strong attachment to the Crown, and to the institutions of the Mother Country.

Just a few days after the Governor-General had forwarded his despatch and the petition, Earl Grey penned a lengthy and argumentative "reply to the Remonstrance of May 1st, 1851. The Act of 1850 did not, he affirmed, profess to make a new Constitution for New South Wales, but its primary object with regard to that Colony was to effect the separation of the Port Phillip District. The only great constitutional change effected by the Act, he said, was that it gave power to the Legislatures of amending and altering almost to the fullest extent their own institutions. He regarded the Remonstrance, mainly, rather as a protest against the principles on which the Australian Provinces had hitherto been governed, and against some laws affecting those Colonies, than against this particular Act. Other matters complained of in the Remonstrance of May, 1851, were closely dealt with in the same despatch. However able the reply, and whatever good legal grounds the arguments used may have had to support them, it did nothing to promote good feeling, in the New South Wales Legislative Council, towards the Home Government.

Earl Grey's despatch brought forth in reply, from the Legislative Council, on August 10th, 1852, a³⁷ document equally lengthy, and much more emphatic in its tones than the previous Remonstrance. This address to the Home Government was prepared by a Select Committee, of which Mr. Wentworth was

³⁷Australian Constitution, pp. 355-60, January 23rd, 1852.

³⁸Australian Constitution, pp. 545-9.

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the chairman, and was transmitted to the Home Government at the request of the Legislative Council. The address was so strongly worded that the Governor-General ⁸⁹expressed regret to the Home Government that the Council should have thought fit to assume, throughout the document, a tone of such great discourtesy. In Section 13 of the address, the Council asserted that the North American Colonies possessed Responsible Government, and, consequently, scarcely any of their legislation was reserved for the disallowance of Her Majesty. It was only, they asserted, in Section 14, when the mischievous principle of direct intermeddling with the functions of the Legislatures of the North American Colonies was insisted upon, and attempted on the part of the Crown and Parliament of England, in the reign of George III., that those unfortunate heartburnings arose, which soon led to the severance of the North American Colonies from the British Empire. They declared that the British Constitution, so far as it was applicable to their circumstances, was the "inalienable birthright of the people of these Colonies." To be content with anything less would, they affirmed, be alike derogatory to themselves and unjust to their children. It would be to bequeath to them a smaller measure of freedom than their fathers had transmitted to them. This was a meanness to which they were not prepared to submit, and a wrong which they would never perpetrate. Finally, they closed with the following words, "Nor will we be deterred from the assertion of our undoubted rights, by the flattery, the imputations, or the obstinacy of any Minister; but will continue our efforts until all we contend for, all that is necessary to place us on a perfect equality with our fellow citizens abroad, is conceded to us

⁸⁹Australian Constitution, p. 545, August 20th, 1852; Governor-General Sir C. A. Fitzroy to the Right Hon. Sir John Pakington.

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and our posterity once and forever." This petition was dated August 10th, 1852, and was signed by Charles Nicholson, Speaker of the Legislative Council.

A crisis in the history of the Australian Colonies had been reached. The Legislature of New South Wales claimed for the colonists the granting of a perfect equality with their fellow subjects abroad, not for New South Wales alone, but for "the people of these Colonies." The Remonstrance of 1851, and the strongly-worded address in reply to Earl Grey's despatch of January 23rd, 1852, may be fitly named, "Australia's Declarations of Right." Then it was that the colonists of New South Wales brought the whole matter of their grievances to a climax, and the Home Government had to decide whether they would grant the requests of the Legislature of New South Wales. To accede would mean a freer but closer union of New South Wales with the Home Land; to refuse would certainly lead to a diminution in the strength of those ties of blood and race which bound the colonists to Britain. The whole address of August, 1852, showed very plainly that the people of New South Wales would never rest until they were granted constitutional privileges similar to those then being enjoyed in Canada. At the end of August, the "Governor-General notified Sir John Pakington, the Colonial Secretary, that, on the motion of Mr. W. C. Wentworth, the Legislative Council had passed a resolution refusing to grant supplies for the year 1854, unless a favorable reply was returned to the address which had just been forwarded. The Governor-General added his conviction that the concessions asked for should be granted; and at the same time stated that he had it on good authority, that the Legislature had ap-

^aAustralian Constitution, August 31st, 1852, p. 550.

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pointed a Select "Committee to prepare a Constitution for New South Wales by virtue of the powers conferred on that body by the Constitution Act of 1850. In a later "despatch, of November 1st, 1852, he informed Sir John Pakington that the report had been submitted to the House by Mr. Wentworth, on September 17th, when the proposed Constitution was read, *pro forma*, the first time.

The discussion which took place in the House of Commons on June 17th, 1852, relative to the "grievance petition from New South Wales Legislature, was "reviewed by the *Times* in language which was a warning as to the handling of the grievances complained of by the New South Wales Legislature. "A stern necessity," said the *Times*, "will shiver to atoms the Acts of Parliament by which we have sought to fetter the Colonies; will give them the management of their lands, their revenues, and their laws; and give them, whether we wish it or not, the fullest powers of self-government. It only remains with us to say whether this shall be gracefully conceded, or wrested from us by tumult and agitation." Before finally considering how the Home Government met the demands from New South Wales, and also to what extent the course of action advised by the *Times* resembled that taken by the Home Government, we must turn for a while to see whether the Legislative Council of Victoria had begun to ask for concessions similar to those requested by New South Wales.

On "December 16th, 1851, at a time when the social and political problems caused by the discovery

"June 16th, "Official History of New South Wales," p. 192; also Australian Constitution, p. 550.

"Australian Constitution, p. 551.

"Mr. Gladstone suggested that, as the document was of such historical importance, it should be read by the clerk at the table. This was accordingly done.

"Reprinted in "Argus," September 25th, 1852.

"V. and P., 1851, Vol. 1, p. 98.

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of gold in Victoria were beginning to make themselves felt, six resolutions were brought before the Legislative Council. They aimed chiefly at securing for the control of the House the administration of the Waste Lands of the Colony, and the Territorial revenue arising from their sale. The mover of these resolutions, when "addressing the House, stated that it was only by passing such resolutions as he was about to submit that they could expect to obtain that self-government which they desired. The six resolutions, briefly put, claimed—

- (1) That the revenues of the Waste Lands of the Colony were the property of the colonists, and should be subject to the control of the Colonial Legislature;
- (2) That the retention of droits of the Crown simultaneously with a reserved Civil List was unjust;
- (3) That it was unjust and unconstitutional for officers not responsible to the Victorian Legislature to have the administration of the Waste Lands and the Territorial revenues of the Colony;
- (4) That the gold discoveries in Victoria made it more important than ever for the Land Funds to be vested in the Legislature;
- (5) That the sense of injustice created in the minds of the colonists was aggravated by the knowledge that Canada was differently dealt with; and that Canada got her privileges because she had resorted to rebellious practices;
- (6) That an address should be presented to the Queen asking for entire control of the Waste Lands of the Colony and the Territorial revenues thence arising.

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The import of the whole of these resolutions amounted to something very like a demand for Responsible Government. The reference to Canada in Resolution 5 was most significant; for a Colony not six months old, the tone of the resolutions was decidedly vigorous and direct. After passing the first resolution, the Legislature agreed to the second in the following amended form, "That the retention of the Crown Land revenues, simultaneously with a reserved Civil List, is an anomaly in the British Constitution, unknown except in the Australian Colonies, but that upon the surrender to the Colonial Legislature of the entire management of all our revenues, Territorial as well as General, including that derived from mines and minerals, we declare that we are prepared to provide for the whole cost of our Internal Government, whether Civil or Military, and to enact an adequate Civil List, during the life of Her Majesty, and for five years after her demise." The significance of this resolution, as passed by the House, lay in the fact that much of it closely resembled part of the New South Wales petition passed only eleven days earlier, save in this, that no request was made, as in New South Wales, for a Constitution similar in its outlines to that of Canada.

The third resolution was lost by one vote. The mover of the resolutions was so disappointed at the defeat of "the "soul of his motion," as he termed it, that he withdrew the remaining resolutions. Hence it was that no address to the Queen was made upon the matter brought forward and passed.

In the following year, on "July 9th, the subject of the Canadian Constitution came prominently before the Legislative Council. On this occasion, Mr. Fawkner, an elective member in the Council, made

⁴Parliamentary Debates, "Argus," December 17th, 1851.
⁵V. and P., 1852-3, Vol. 1, Part 1, p. 31.

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a very definite attempt to bring the Constitution of the Colony of Victoria under review. He asked that a committee of nine should be appointed to take the Act of Constitution of the Colony into serious consideration, and to report to the Legislative Council such alterations and amendments as, in their opinion, the Act was susceptible of, and the state of the Colony, under the present circumstances, might require. In his speech to the House, he touched upon some points which he considered would engage its attention, such as the question of nominees and the establishment of two Chambers. No discussion, however, took place. The proposal was "lost in the Legislature owing to a strongly-united vote against the motion by the nominees and the representatives of the pastoral districts of the Colony.

⁵⁰Nearly ten weeks later, Dr. Thomson gave notice of motion that an address should be presented to Her Majesty the Queen, setting forth the dissatisfaction of the Council with the existing Constitution, and praying her to bestow upon the Colony of Victoria powers of self-government and a Constitution similar to those which had been granted to the United Provinces of Canada. This notice of motion was before the House on four subsequent dates; but on November 2nd Dr. Thomson withdrew it. It is interesting to note that, when Dr. Thomson was informing the House of the withdrawal of his notice of motion, he distinctly stated that he had desired an address to the Queen, praying Her Majesty to grant "Responsible Government" to the Colony of Victoria. At the same meeting of the House, he intimated that he would, on November 5th, bring forward an ⁵¹amended notice on the same subject. On

⁵⁰See chapter on "Analysis of Voting."

⁵⁰V. and P., 1852-3, Vol. 1, Part 1, p. 203. Dr. Thomson's notice of motion was given on September 17th, and on October 26th, 27th, 28th and 29th.

⁵¹Parliamentary Debates, November 5th. See "Argus," November 6th.

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the date specified, he brought forward a motion that an address should be presented to the Lieut.-Governor of Victoria, drawing his attention to the inconvenience experienced in the House, from the absence of a responsible officer in the Revenue Department of the Government. The motion was negatived. Why Dr. Thomson withdrew his original notice of motion does not appear in the Parliamentary Debates. One possible and probable explanation may be found in the fact that on the day he withdrew the notice of motion concerning "Responsible Government," another member gave a notice of motion which charged the Executive Government with a lack "of intelligence, promptitude and vigor" in its administration. Dr. Thomson probably knew this was coming. This "want of confidence" motion came before the House on November 23rd, 1852, and caused some direct discussion on the subject of Responsible Government. The motion certainly was lost in the House, but only by something very like an accident. Dr. Thomson's original notice of motion is the sole direct reference recorded in the "Votes and Proceedings of the Victorian Legislative Council," prior to the arrival of Sir John Pakington's⁵² despatch dated December 15th, 1852, of a desire for a Constitution similar to that of Canada. The Port Phillip petition of 1840 certainly asked for a Responsible Government, and for the separation of the Port Phillip District from the rest of New South Wales. That petition, however, was made eleven years before the Victorian Legislative Council came into existence.

On "November 16th, 1852, the Legislature appointed a Select Committee to consider and report upon the propriety of increasing the whole number

⁵²Australian Constitution, p. 579.

⁵³V. and P., 1852-3, Vol. 1, p. 253.

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of the members of the Council. The "Report, which was presented to the House on December 9th, recommended that the total number of members should be increased from thirty to fifty-four, in order to cope with the increasing business of the Colony. The members of the Select Committee stated that they did not feel themselves authorised to conduct an inquiry as to the necessity of a vital change in the Constitution of the Colony, and they considered that the time had not arrived when investigations of such serious importance could be undertaken. There was, however, they said, the general feeling that the contemplated step of an increase of members in the present Council was but preparatory to that more important alteration of the Legislature, by a revision of the Constitution, which at no distant period must be the consequence attendant upon the rapid progress in the prosperity and importance of the Colony of Victoria.

After examining the cases cited for the purpose of finding out how far Victoria had proceeded up to the end of 1852 in seeking for Responsible Government, we can safely state the following conclusion, namely, that the movement towards securing Responsible Government in Victoria was plainly developing, and would have assumed definite form within a comparatively short time.. Victoria had not been a separate Colony for even two years, when the action of the Legislature of New South Wales, in December, 1851, brought the offer of Responsible Government, not only to that Colony, but also to Victoria and South Australia. The concession came to Victoria before sufficient time had elapsed to allow the growing political feeling on that subject to ripen into direct requests. Victoria reaped where New South Wales had sowed.

^{**}V. and P., Vol. 1, Part 1, 1852-3, p. 303. For the report see V. and P., 1852-3, Vol. 2, Part 1, p. 537.

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Another factor in bringing Responsible Government to Australia was the discovery of rich goldfields in New South Wales and in Victoria. This is quite evident from the despatch quoted in the next paragraph; it was not, however, the primary cause of it. How the offer of Responsible Government came to New South Wales, Victoria and South Australia we shall now consider.

In a "despatch to the Governor-General, Sir Charles Fitzroy, dated December 15th, 1852, Sir John Pakington stated that Her Majesty's Government had been fully impressed with the importance to be attached to the petition sent from the New South Wales Legislature through the Governor-General, on January 15th, 1852, in that it carried with it the sentiments of the most loyal and influential members of the community. The Home Government, he stated, were also influenced by the considerations arising from the extraordinary discoveries of "gold which had taken place in some of the Australian Colonies, and which they considered to have imparted new and unforeseen features to the social and political conditions of the Colonies concerned. They felt that it had been urgently necessary to place full powers of self-government in the hands of such a people, so advanced in wealth and prosperity, and showing evidence of signal fitness to regulate their own affairs. He advised the creation of a double Chamber, for a safe and satisfactory Government; and then stated that he had now the pleasure of announcing the readiness on the part of the Home Government to make the concessions which the colonists of New South Wales desired. There were ample powers, he continued,

⁴⁴Australian Constitution, pp. 566-70.

⁴⁵The theory that the Eureka Stockade episode in 1854 brought about Responsible Government in Victoria is not a sound one. Public opinion at the time was so pronouncedly against Mr. Foster, the Colonial Secretary, that he voluntarily resigned his position. No other member of the Executive followed his example.

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for effecting this alteration, by the Constitution Act of 1850, subject to the confirmation by the Crown of any Act passed for that purpose. So the great desire of the Legislature of New South Wales was now definitely on the way towards realisation, and, in a despatch of the same date as that containing the good news to New South Wales, a message of equal importance came to the Victorian Legislature.

On "December 15th, 1852, Sir John Pakington forwarded to Lieut.-Governor La Trobe a copy of the despatch sent to the Governor-General, and in an accompanying letter stated that, although Her Majesty's Government had not any evidence before them that the Legislative Council of Victoria was prepared to make the same proposal as that submitted to them by New South Wales, they had nevertheless, sufficient intimation of the general views of that body to leave them no hesitation in "offering to the Colony of Victoria the same concessions on the same terms. "Though," Sir John Pakington continued, "you see that this despatch is, in form, an answer to certain representations on the part of the New South Wales Legislative Council, you are to regard the substance of it as equally applicable to the Colony under your Government, and Her Majesty's Government undertakes to receive any constitutional act passed by the Legislature of Victoria, in the same manner, and will take steps accordingly, as they purpose doing with that which may be passed by the Legislature of New South Wales." The Duke of Newcastle, the successor of Sir John Pakington, in a despatch, "dated January 18th, 1853, to the Governor-General, concurred in the contents of his predecessor's despatch

⁸⁷Australian Constitution, p. 579.

⁸⁸A similar offer was made at the same time to South Australia (Australian Constitution, p. 594). Not until January 30th, 1854, was the same offer made to Van Diemen's Land (Australian Constitution, p. 786).

⁸⁹Australian Constitution, p. 570.

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of December 15th, 1852. In this he made reference to Wentworth's motion relative to the stopping of supplies for 1854, in case a favourable answer to the petition was not forthcoming. He also noted the preparation being made for a new Constitution for New South Wales; all these he considered as reiterations to add new force to the petition made at the commencement of the year. A copy of the same despatch, dated February 8th, 1853, was also *forwarded to Mr. La Trobe, the Lieut.-Governor of Victoria.

Not in vain had the vigorous words of the two petitions from the New South Wales Legislature been presented to the British Parliament; not without success had the disciples of Lord Durham made their strongly-worded representations to the Home Government. Yet noteworthy as were these petitions and the influences at work behind them, it is even more remarkable, in the history of British Colonial policy, to mark the wisdom and justice displayed by the British Government in granting, and in granting speedily, those privileges which the Legislature of New South Wales claimed in their petition to be "the inalienable birthright of the people of these colonies."

⁶⁰Australian Constitution, p. 580.

CHAPTER II.

THE CONSTITUTION DESIRED, AND ITS SANCTION BY THE IMPERIAL GOVERNMENT.

The Inauguration of Responsible Government.

The pathway to self-government in Victoria, as well as in New South Wales, was at length quite clear, and we can now turn our attention almost exclusively to the progress made by the Legislative Council of Victoria towards the realisation of Responsible Government. We can follow out the course of events concerning the New Constitution which was prepared, not only until its proclamation on November 23rd, 1855, but also to the dissolution of the Legislative Council on March 20th, 1856.

On September 1st, 1853, a Select Committee was appointed by the House to consider and report upon the best form of Constitution for the Colony. This committee was composed of three official nominees and nine elective members, and sat twenty-eight times. On December 9th, 1853, they presented their report to the House, together with the seventy resolutions upon which they had constructed the draft of a Bill to establish a new Constitution for Victoria. The report stated that, while the committee had desired to approximate the future Constitution to that of the Mother Country, they had unanimously concurred in thinking that the social

¹The following gentlemen composed the Committee:—The Colonial Secretary (Mr. J. V. F. Foster), the Attorney-General (Mr. W. F. Stawell), the Auditor-General (Mr. E. Grimes), the Speaker (Dr. Palmer), Mr. W. C. Haines, Mr. O'Shanassy, Mr. Greeves, Mr. Goodman, Mr. Nicholson, Mr. Miller, Mr. Smith and Dr. Thomson. The three first were the official nominees; the others, elected members of the House. V. and P., Vol. 1, Part 1, 1853-4, p. 20.

²V. and P., Vol. 3, Part 2, 1853-4, pp. 587-598.

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conditions of the Colony rendered a close assimilation to certain British institutions impossible. The committee recommended, amongst other things:—

- (a) That the Legislature of the Colony should consist of the Governor and of two Houses, to be called the Parliament of Victoria;
- (b) That the two Houses should be designated respectively, "The Legislative Council" and "The House of Assembly";
- (c) That the Legislative Council should be elective, and should represent the education, wealth, and, more especially, the settled interests of the country.
- (d) That to such a body should be entrusted the Legislative functions of the House of Lords;
- (e) That upon the House of Assembly should be conferred all the rights and powers of the House of Commons;
- (f) That the duration of the House of Assembly should be for three years;
- *(g) That the responsible officers should be the Colonial Secretary, to be called in future the Chief Secretary, the Attorney-General, the Colonial Treasurer, to be called in future the Treasurer, the Collector of Customs,

*Afterwards altered to Legislative Assembly.

† and ‡The substance of (g) and (h) was embodied in Section XXIV. of the Select Committee's Bill. V. and P., 1853-4, Vol. 3, Part 2, p. 629. When the Constitution Act was passed by the Victorian Legislature, Section XVIII., which referred to responsible officers, read:—

"Of the following officers of Government for the time being, that is to say, the Colonial Secretary or Chief Secretary, Attorney-General, Colonial Treasurer or Treasurer, Commissioner of Public Works, Collector of Customs or Commissioner of Trade and Customs, Surveyor-General or Commissioner of Crown Lands and Survey, and Solicitor-General, or the persons for the time being holding these offices, four at least shall be members of the Council or Assembly.

"In the Constitution Act of Victoria (18 and 19 Vict. Cap. 55) passed by the Imperial Parliament, Section XVIII. remained unchanged, but at the side this marginal note was placed—"Who are to be responsible officers."

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to be called in future the Commissioner of Trade and Customs, the Surveyor-General, to be called in future the Commissioner of Crown Lands or Survey, the Postmaster-General, the Solicitor-General, and the Commissioner of Public Works;

- (h) That of the responsible officers of Government, two at least should have seats in the Legislative Council, and two at least have seats in the House of Assembly;
- (i) That all the patronage of the Government should be vested in the Governor;
- (j) That the sum of £50,000 should be reserved on the schedule for public worship, for the advancement of religion, and the promotion of good morals in the Colony of Victoria.

As the report of the committee stated, the *Constitution Bill* had been drawn up to meet the social conditions of the Colony. The committee did not attempt to model the Victorian Parliament lavishly, either upon that of Britain or of Canada. In England, the Upper House was composed chiefly of hereditary peers; in Canada, of nominees of the Crown. The proposed Victorian Upper House was to be elective. The British Parliament could last for seven years, the Canadian four; that of Victoria was not to exceed three years in duration. The first reading of the Bill was on December 15th, and provoked little discussion, except on the question of the Upper House being elective. The second reading took place on January 25th; there was further discussion on the proposed elective Upper House, and then the Bill was referred to the committee of the whole House. The Bill came before the committee several times, and two important resolutions of the Select Committee were altered:—

- (1) Patronage was to be vested in the Governor and the Executive, instead of in the Governor alone;

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- (2) Fifty thousand pounds was to be devoted "for the advancement of the *Christian* religion," instead of "for the advancement of religion."

Considerable discussion, both within and without the House, took place over this grant of £50,000. On March 21st, a motion was made in the House to strike out the grant for public worship. It was lost by a large majority. The Bill passed its third reading on March 24th, 1854, and was entitled *An Act to establish a Constitution in and for the Colony of Victoria*. Early in July, 1854, Earl Grey forwarded to Sir Charles Hotham, Lieut.-Governor of Victoria, a copy of a despatch sent to the Governor-General, in which he stated that the Constitution from Victoria had reached England on May 31st. The sitting of Parliament was, however, too far advanced, he said, to be able to do anything in that session; also the novelty and importance of some of the provisions of the Act would make it necessary to postpone their consideration until next session.

Sir Charles Hotham seems to have had uneasy feelings with regard to the *New Constitution Act* for Victoria, for, on October 25th, 1854, he wrote to the Right Hon. Earl Grey, stating that he considered the Constitution was in reality that of a republic. It was quite possible that Sir Charles Hotham had

*On March 25th, the Bill was reserved for the signification of Her Majesty's pleasure. On the 28th, it was published in the "Victorian Government Gazette."

IV. and P., 1854-5, Vol. 3, Part 1, p. 22, July 3rd, 1854.

†Sir Charles Hotham, the successor of Lieut.-Governor La Trobe, who left Melbourne for England on May 5th, 1854, was born in 1806, and distinguished himself in the naval service. He was a midshipman on the "Naiad," and assisted at the reduction of an Algerine brig-of-war under the batteries of Bona in 1824. He was promoted to K.C.B. for his distinguished service in the operation of La Plata in 1845. From 1846 to 1849 he was a Commodore on the West Coast of Africa. He filled the position of a diplomatic representative of Great Britain to the Argentine Conference. The Duke of Newcastle offered him the appointment of Lieut.-Governor of Victoria. This position he accepted, and landed at Melbourne on June 21st, 1854. His death occurred at Toorak on December 31st, 1855.

‡Australian Constitution, p. 833.

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opinions similar to those expressed by Mr. Griffiths, a nominee member of the Victorian Legislature, when he spoke in opposition to the Upper House being elective. That gentleman questioned whether it was possible to have a monarchy with republican institutions; in his opinion, an elective Upper House was essentially republican in character.

It was during the same month, October, 1854, that one of the strangest ¹⁰motions in the history of the Legislative Council of Victoria was brought forward—a motion which sought for far more than Responsible Government. This was during the period of great unrest caused by the rejection of the *Convicts Prevention Act* by the Home Government. The motion desired the Imperial authorities to take proper steps to erect the Colony of Victoria into an Independent Province or Kingdom, under an hereditary Chief Magistrate of a branch of the Royal Family of Great Britain and Ireland. This motion, then, went far beyond the desire merely for Responsible Government, and practically amounted to a request for independence, though under the rule of a member of the Royal Family. When, however, the young-Prince-motion was put before the House, it received very meagre support.

The delay in England in dealing with the Constitution caused a feeling of unrest in the Colony; there was a spirit of discontent, which daily became more manifest. The latter part of the year 1854 was a stormy one in the history of Victoria, for in October came the disturbances at Ballarat over the grievances which the miners had against the Government. On November 14th of the same year, an address concerning the delay of the Bill was sent to the Queen, wherein it was stated that, in the opinion of the Legislative Council, no valid reason could exist for any further delay. It was recognised that

¹⁰V. and P., October 31st, 1854, Vol. 1, Part 1, p. 88.

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public opinion was making itself felt with regard to the system of a Ministry irresponsible to the people's representatives. The manner in which this expression of public opinion was demonstrated may now be examined.

Towards the end of 1854, the Eureka Stockade episode and the troubles connected with the goldfields in Victoria gave rise to an interesting political situation. Quite unexpectedly, as it were, an important feature of the doctrine of Responsible Government was put into actual practice, rather more than a year before the *New Constitution Act* became law in Victoria. The circumstances leading up to this situation were as follow:—The fatal collision at Ballarat and the bringing of the prisoners to Melbourne produced great excitement amongst the people. Popular feeling in Melbourne and elsewhere was directed against the policy of the Governor and his Executive with regard to the gold-mining communities of the Colony. The Colonial Secretary, Mr. J. V. F. Foster, was openly blamed in public meetings for the continuance of the licensing system of the goldfields, and his dismissal from office was demanded. Public opinion was thoroughly aroused. Mr. Foster, who was an Executive Councillor and also an official nominee, was responsible, not to the Legislative Council, but to the Lieut.-Governor. He therefore wrote to him, stating that if his remaining in office was an impediment to the Government, he was prepared to resign, though not anxious to do so. That the Lieut.-Governor fully recognised the power of the voice of the people is abundantly clear from the "reply he sent to Mr. Foster, in which he said, "I cannot disguise from myself that, if I were to decline accepting your resignation, the Queen's Colony would be placed in jeopardy." So, on December 9th, 1854, Mr. Foster

¹¹V. and P., Legislative Assembly, 1867, Vol. 2, p. 462.

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resigned his office as Colonial Secretary, and Lieut.-Governor Hotham accepted his resignation.

In 1867, Captain MacMahon, who had been Acting Chief Commissioner of Police in 1854, gave evidence concerning this resignation of Mr. Foster, and pointed out clearly the true significance of the incident. That retirement was, he considered, the first real step towards the introduction of Responsible Government in Victoria, as admitting a responsibility to exist between an officer holding political office and the population over which he was placed. Of course, had Responsible Government been in practice then, the other Ministers should also have resigned their offices. Upon this question, the ¹²Parliamentary debate of March 28th, 1855, gives some valuable information. In this debate, the Auditor-General, when referring to Mr. Foster's retirement, openly stated that the odium which had been cast upon Mr. Foster should have been shared by the other members of the ¹³Executive, who had aided him with their advice. The principle of united Ministerial responsibility in connection with the Government policy was here definitely indicated; the doctrine of Responsible Government was clearly approached. But the officers of the Government were not, under the *Constitution Act* of 1850, responsible to anyone but the Lieut.-Governor, so they kept their seats, and the pension rights to which they later became entitled under the *New Constitution Act*. Beyond the Auditor-General's statement in the House, no other action was taken by Mr. Foster's colleagues; he fell alone.

Some months later an unexpected Parliamentary incident occurred which caused the Lieut.-Governor further anxiety, and made him earnestly desire the

¹²"Argus," March 29th, 1855, Parliamentary Debates.

¹³At this time four out of five Executive Councillors were official nominees, and therefore members of the quasi-ministry. (See chapter on "Executive").

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speedy arrival of the New Constitution. On "June 12th, 1855, the day on which the Legislative Council was prorogued, Mr. J. O'Shanassy gave notice of a motion, which he intended to move early in the ensuing session. The three sections of the notice of motion are full of interest, and they caused the¹⁴ Governor to write a special despatch to the Home Authorities, who were requested to advise him as to the proper course to pursue with regard to it. The notice of motion set out:—

- (1) That this Council, after four years of practical experience of the working of the system of Irresponsible Government in Victoria, declares that it has proved itself most injurious to the highest interests of the people, confessedly unsuited to their wants, opposed most frequently to their deliberate wishes, destructive alike to their inalienable rights and most cherished constitutional liberties, and ought to cease for ever in this country;
- (2) That, whether the New Constitution shall have reached Victoria or not, this Council is of the opinion that it is their paramount duty to call upon the Commander-in-Chief, on behalf of the inhabitants, whose happiness and prosperity are imperilled, present and future, to establish a system in consonance with the views and opinions of a free people—the enlightened system of Responsible Government;
- (3) That this country pledges itself to make an equitable provision for those Officers of the Government who may be compelled to retire from office in consequence of the contemplated political changes.

¹⁴V. and P., Vol. 1, Part 1, 1854-5, p. 483.

¹⁵Sir Charles Hotham became Governor-in-Chief of Victoria by a despatch dated February 2nd, 1855. Took the oath on May 22nd, 1855.

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At a ¹⁶later date, after the New Constitution had arrived, Mr. O'Shanassy was asked what he had really intended by his notice of motion. He stated that, as the House would have dissolved by law on October 1st, 1856, he purposed striving for a House entirely free from nominee element, and then to assist to introduce Responsible Government. As far as Section 1 of Mr. O'Shanassy's motion was concerned, it would probably have secured strong support in the Legislature; but Section 2, looked at in the light of Mr. O'Shanassy's own explanation with regard to eliminating nominee members, amounted to a determination, if the Constitution did not arrive, to ignore the law of the land, which required the composition of the Legislature to contain one-third nominees. Mr. O'Shanassy's notice of motion gave no hint of aiming at a House without nominees. The Law Officers would never have advised the Governor as they did, had such a course been suggested in the notice of motion. What this advice was we shall shortly see. With regard to establishing "responsible government" in a Victorian Legislature, it is most likely that Mr. O'Shanassy had in mind that portion of Lord Durham's Report, where he stated that the ¹⁷vital change could be carried out without any legislation, and that the introduction of Responsible Government would simply amount to this, that the Crown would henceforth consult the wishes of the people, as to the choice of its servants.

Mr. H. S. Chapman, in his booklet, "Parliamentary Government or Responsible Ministries for the Australian Colonies," published in 1854, gave wide prominence to Lord Durham's Report on the political situation in Canada, and to the subsequent introduction of Responsible Government into that

¹⁶See Parliamentary Debates, "Argus," November 28th, 1855.

¹⁷Lord Durham's Report, edited by Sir C. P. Lucas, Vol. 2, pp. 277, 280, 285.

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Colony. He also discussed at some length the subject of Responsible Ministries in the Australian Colonies. This booklet must have been well known to Mr. O'Shanassy. ¹⁸Finally, the proposal by Edward Gibbon Wakefield to introduce Ministerial responsibility into the New Zealand Government, in June, 1854, must also have been a matter of common knowledge in political circles in Australia. From whatever source Mr. O'Shanassy received the impulse that led to his ¹⁹notice of motion, it is quite evident that he felt the time for Responsible Government in Victoria had not only arrived, but was overdue. Governor Hotham, who ²⁰wrote urgently to Lord John Russell for advice concerning Mr. O'Shanassy's notice of motion, said that he was informed by the Law Officers of the Crown that no legal objection existed to the adoption of the change which was recommended in the notice of motion, but, as it involved the introduction of Responsible Government, he desired that he should be furnished with instructions as to the course he was to pursue. He further stated that, since the despatches of Sir J. Pakington, of December 15th, 1852, had been known, a heartburning on the part of the people for Responsible Government had existed. Then he drew attention to the fact that the present Legislative Council would be dissolved on October 1st, 1856, and that new writs for a general election would follow. "From the temper of the colonists," Governor Hotham continued, "and more especially from the feeling which exists on the goldfields, I am satisfied that a universal demand for Responsible Government will arise, and that they will refuse to proceed to an election unless the Government is to be chosen from the majority

¹⁸"The Constitutional History and Law of New Zealand," p. 276, by Hight and Bamford.

¹⁹ and ²⁰Australian Constitution, pp. 926-7, June 27th, 1855.

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of the new Council. If the New Constitution shall not have arrived before that period, either I must accede to the wishes of the people, prepare for an excitement which will border on revolution, or leave the Colony without a Government." That the Governor had begun to anticipate something which would again bring about a crisis, as in the case of the goldfields and the insurrection at Ballarat, is markedly borne out in the closing part of his despatch, of June 27th, 1855, where he says, "I specially request that you do, by return mail, inform me—

- (1) When the Constitution may be expected;
- (2) Whether in the event of a delay being likely to arise before the arrival of the Constitution, Her Majesty's Government will give their sanction to the objects contained in Mr. O'Shanassy's motion; and, finally, I request, it is most urgent that I should receive an immediate answer."

Governor Hotham was, without doubt, very anxious for the arrival of the Constitution, before a situation arose which he felt would be full of political difficulty. His anxiety, however, with regard to the arrival of the New Constitution was soon relieved, for on October 23rd, 1855, he received it. To the inauguration connected with that Constitution we can now turn, and consider the new political problems to which its arrival and proclamation gave rise.

In a ²¹lengthy despatch to Governor Hotham, dated July 20th, 1855, Lord John Russell, when speaking of the New Constitution for Victoria, expressed the earnest hope that this grant of self-government to Victoria—a grant which was in more ample measure than had yet been established in any other Colony of Great Britain—might fulfil, in its

²¹Australian Constitution, p. 947.

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results, the anticipations of all friends of liberty and good Government, both within and without the Colony.

²²Though the Constitution had arrived, and was to be proclaimed on November 23rd, 1855, the Legislative Council, as appointed under the Act of 1850, was still in office; the blended character of the House remained unaltered. Before the two Houses of Parliament, as proposed in the *New Constitution Act*, could assemble, a new *Electoral Act* had to be passed by the present Legislative Council. Then, when that was settled, the House could be dissolved, the elections held, and the new members take their seats in the Legislative Council and the Legislative Assembly. It is quite certain that, with the arrival of the New Constitution, the situation of a part-nominee House, with the Officers of the Government in no way dependent upon the wish of the majority in the Legislature, presented a difficulty to the Governor with regard to the introduction of Responsible Government. As far back as August 4th, 1853, the Duke of Newcastle, in a ²³despatch to Sir Charles Fitzroy, the Governor of New South Wales, had anticipated that some such political situation might arise, if an attempt were made to introduce Responsible Government into the blended House. He

²²Section V. of the Statute stated that the New Constitution was to be proclaimed within one month after it had been received. Section 59 of the Bill fixed the time at three months. (Statutes at Large, Vict., 18 and 19, Cap. 55).

William F. Stawell, the Attorney-General, and Robert Molesworth, the Solicitor General, were asked by Governor Hotham when the Constitution Act should be proclaimed. They replied, "It would appear that inadvertently a time was fixed by the fifth clause of the Statute, not identical with that named in the fifty-ninth clause of the Bill, but as the time named in the Statute is shorter than that named in the Bill, the provisions of both may be complied with by proclaiming the whole Statute, including the Bill, within one month. If this course were not pursued, a difficult question might arise as to the power of proclaiming after one month; but we could not advise such a course being pursued. (V. and P., 1855-6, Vol 2, Part 1, p. 576).

²³Australian Constitution, p. 680. Copies of the same despatch were sent to the Lieut.-Governors of Victoria, South Australia and Van Diemen's Land.

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expressed the opinion that to conduct what was ordinarily understood as Responsible Government with a single House, composed in part of nominees of the Crown, would be, at all events, a new experiment, and one of which he could not very well foresee the issue. He was not at all inclined to anticipate its complete success. As we shall see later, the anomalous political situation which arose in the Victorian Legislature shortly after the proclamation of the New Constitution was a concrete illustration of what the Duke of Newcastle had feared might come to pass.

Since the arrival of the Constitution, those Officers of the Government who would become politically responsible under the New Constitution had doubted their exact position and functions. They asked the Governor's opinion on these matters. With regard to their position after the proclamation of the New Constitution, they received no definite instruction until the morning of the proclamation. Their ²political position, in the meantime, was soon made

²V. and P., 1855-6, Vol. 2, Part 1, p. 576.

On October 29th the Governor requested the Law Officers to give their opinion on the following points:—

(a) Under the Constitutional Act, when do the officers designated in the 18th Clause assume their responsibility?

(b) Are they responsible to the present Legislature?

Two days later the Attorney-General (Mr. W. F. Stawell) and the Solicitor-General (Mr. R. Molesworth) concurred in sending the following replies to the Governor's questions:—

(a) The words "responsible officers" occur not in the text, but merely in the marginal notes of Sections 18 and 51 of the amended Bill. According to the provisions of the 18th Clause, four of the officers referred to in it must from the time of the return of the writs for the first election, or at least of the meeting of the Legislative Council, and Legislative Assembly, be members of one body or the other; the word "responsible" applied to such officers bears no legal meaning. To a certain extent, the officers mentioned in that clause have always been responsible to the existing Council; nor, indeed, with the exception of the necessity of a certain number being elected members under the 18th Clause, do the new Acts make any legal change in their responsibility, though practically they may henceforth be more liable to be removed, and called to account according to the feelings of the Legislative bodies than heretofore.

(b) Their responsibility to the existing Council legally remains unaltered.

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clear to them. When the Governor, on ²⁵November the 5th, asked the Officers of the Executive Council, four of whom were official nominees with seats in the Legislature, to meet on the following day for the purpose of going through the Estimates, they stated that they experienced a difficulty at starting. They pointed out that they were not informed as to whether they were to consider the Estimates as responsible Officers under the Constitutional Act, or as Officers responsible to His Excellency for carrying out the policy which he might indicate. In reply to this, the Governor stated:—

- (1) The responsibility of the Officers commences on the day of the proclamation, and the Governor will not sanction any deviation from the present form of Government or routine till then.
- (2) With regard to the Estimates, if the Officers desire to postpone *framing* the Estimates until they are responsible, the Governor acquiesces in their wish. If they think it right to lay the Estimates on the table of the Council, when it meets, the Governor will consider such Estimates as having been framed under the present form of Government, thus requiring his sanction.

This answer quite satisfactorily defined the position of the Officers of Government up to the Proclamation; indeed, no other sound reply was possible. The Governor realised that the political situation would necessarily be changed after the Proclamation. What some of his views were on the new order of things, when the Constitution had been proclaimed, we may now consider.

On the morning of ²⁶November 23rd, 1855, and just before the proclamation of the New Constitu-

²⁵V. and P. Vol. 2, Part 1, 1855-6, p. 577.

²⁶V. and P., Vol. 2, Part 1, 1855-6, p. 581; also Parliamentary Debates, "Argus," November 29th, 1855.

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tion took place. Governor Hotham handed to the Colonial Secretary a Minute, which, an accompanying letter explained, was transmitted for the information and guidance of responsible officers regarding the future administration of the Colony. He deemed it right, Governor Hotham said, to record the views which mature consideration had led him to form regarding the position which he, as Governor, would hold with his responsible advisers. He requested the Colonial Secretary to consider this document under his special charge, and, in the event of a change of Government, to hand it over to his successor. The greater part of the Minute was quite constitutional; one very important section, however, made an extraordinary demand, quite incompatible with the introduction of Responsible Government. The wording of the section ran: "The Governor of this Colony will always require that, previous to the introduction of any measures into Parliament, his sanction should be obtained. Should he refuse his sanction, and the measure be of such importance as to warrant such a consequence, he may, should he think proper, change his administration, or they may, should they feel aggrieved, tender their resignation; but in no case can they be justified in submitting a measure to Parliament without the cognizance of the Governor." At the same time, Governor Hotham maintained that he had no desire to interfere with the arrangement of the Ministry, or to be party to their consultations; he wished, as he stated in the Minute, to confine himself to the exercise of his own functions, as he understood them. This extraordinary instruction for the information and guidance of Responsible Officers would have rendered Responsible Government an impossibility, for the Governor would have retained, under such a course, the powers of an autocrat. Governor Hotham would really have had "a double veto"; he would have possessed power to prevent

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the introduction into Parliament of any measure which was not agreeable to him, in addition to his right to withhold his assent from any Bill which had passed the House. The day after the "Proclamation, in response to a letter from the Colonial Secretary, the ²⁸Attorney-General advised the Governor as to his formally appointing the Responsible Officers of the Government. He pointed out that, though politically irresponsible under the old Act, they continued to hold offices, the occupants of which were responsible, not merely legally, but politically, and thus their position was most anomalous. To meet this, the Attorney-General advised that new Commissions should be issued to all officers who were to become politically responsible. "Their positions," he said, "would be thus determined, and their responsibility unquestionable." That Governor Hotham quite realised this anomalous situation is clearly shown in his last despatch, written ²⁹(but unsigned) to the Home Government, and dealing with the inauguration of the New Constitution. He said: "A singular, and I apprehend, an unexpected state of things thus ensued, conformably to the proclaimed Act; a Responsible Government came into force under a Constitution for which it was not intended. The Ministers hold their seats as nominee members, by commission from me, and they address a Legislative Council elected under a different

²⁷On the day that the Constitution was proclaimed, Sir Charles Hotham wrote out his resignation as Governor, stating that he was almost due for his rank as admiral, and wished again to take up his duties in the Navy. He affirmed that he had used every power the Almighty had given him to promote the interests of the Colony of Victoria; but, in so doing, he had taxed his strength to the utmost. He prayed Her Majesty to appoint his successor. *Parliamentary Papers*, Vol 2, p. 5. Governor Hotham to Hon. Sir William Molesworth.

²⁸V. and P., Vol. 2, Part 1, 1855-6, p. 578. See "Argus," November 29th, 1855.

²⁹*Australian Constitution*, p. 937. Despatch from Governor Sir C. A. Hotham to the Right Hon. Sir William Molesworth (December 21st, 1855), vouched for by the Officer-administering-the-Government, Major-General Edward Macarthur.

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franchise, which does not represent the constituencies contemplated in the *Constitutional Act*." The Governor took the advice of the Attorney-General, and on November 26th released from office, "on political grounds," those Officers of the Government who would become politically responsible by the Proclamation of the New Constitution. These officers were: The Colonial Secretary, the Attorney-General, the Collector of Customs and the Surveyor-General. They were requested by the Government to continue the duties of their offices until their successors had been appointed. All the officers thus notified on November 26th, not only on the same day acknowledged their release from office, but also claimed their ³⁰pensions.

One more political move was made on the 26th day of November. Governor Hotham offered Mr. W. C. Haines, who had just been released from his post as Colonial Secretary, his old position under the new title of Chief Secretary, and requested him to submit a list of the persons who he desired should form the new Ministry. This list must have been submitted to the Governor either on November 26th or 27th, for the names of the seven members of the new Ministry were published in the *Government Gazette Extraordinary*, of November 28th. When the House met on November 27th, the officers who had been released "on political grounds" were not present. The Colonial Engineer then informed the members of the House that the Colonial Secretary, the Attorney-General, the Collector of Customs, and the Surveyor-General had tendered their resignations to the Governor, who had accepted them. The House, taken completely by surprise, went into Committee to discuss the political situation. It agreed to present to the Governor an address, asking for all papers and documents that would explain

³⁰18 and 19 Vict., Cap. 55, Section 50, Statutes at Large, p. 604.

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why he had adopted the present course of political action. ³¹All the papers requested were sent to the House by the Governor on the following day. Their chief contents we have already mentioned. When the House met on the 28th, the Speaker announced that there had been handed to him seven Letters Patent, dated 28th, appointing—

William Clarke Haines, Esq., as Chief Secretary of the Colony of Victoria.

William Foster Stawell, Esq., as Attorney-General of the Colony of Victoria.

Charles Sladen, Esq., as Treasurer of the Colony of Victoria.

Charles Pasley, Esq., as Commissioner of Public Works of the Colony of Victoria.

Hugh Culling Eardley Childers, Esq., as Commissioner of Trade and Customs of the Colony of Victoria.

Andrew Clarke, Esq., as Surveyor-General of the Colony of Victoria.

Robert Molesworth, Esq., as Solicitor-General of the Colony of Victoria.

This sudden and unexpected releasing of official nominees "on political grounds," and almost simultaneously creating them members of a new Ministry without the knowledge of the House, made a great stir amongst the members. The whole proceeding was violently attacked by the elected representatives, and the opinion was voiced that ³²personal motives had been no small factor in accounting for the course political events had taken.

The Governor's Minute of November 23rd also now came in for very severe criticism, and the Ministers finally sent a ³³memorandum to the

³¹V. and P., Vol. 2, Part 1, 1855-6, pp. 575-82; also published in the "Argus," November 29th, 1855.

³²18 and 19 Vict., Cap. 55, Section 50, Statutes at Large, p. 604.

³³(a) Parliamentary Debates, "Argus," December 5th, 1855. On December 4th the Chief Secretary frankly told the House he and his colleagues had since considered the Governor's minute. They had come to the conclusion that it was impracticable. (b) V. and P., 1855-6, Vol. 1, Part 2, p. 763.

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Governor on November 30th with regard to it. They pointed out that, when they had received the document, it did not then really relate to them, therefore it did not receive the consideration to which it was entitled. Now, however, they felt it imperative to state to His Excellency that they could not consent to accept its terms as defining Responsible Government. They therefore requested that the Governor would withdraw his Minute. When the reply came, three days later, the Governor intimated that he had transmitted the Minute in question as an exposition of his own views, and not as a dictation of the terms on which he expected a Ministry to accept office.

The climax of the resentment felt in the House against the proceedings of the Governor, upon the occasion of the advent of the New Constitution, came in the form of a ³⁴motion by Mr. Greeves, an elected member, on December 4th. It contained six resolutions, the two most important being:—

(No. 5) That this House views with extreme surprise and regret the principles laid down in His Excellency's Minute to the Colonial Secretary, as to the conditions under which the present or any future Administration are to consider themselves acting; and feels called upon to express its disapprobation that any persons would accept office on terms so humiliating to themselves, so derogatory to the rights of the people and to the powers of the Legislature of Victoria; so opposed to sound views of Responsible Government and subversive of the principles of the Constitution; and this House disclaims sanctioning any part of, and protests against and censures the whole proceeding.

³⁴V. and P., Vol. 1, Part 1, December 4th and 5th, 1855.

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(No. 6) That an address embodying the above resolutions be prepared and presented to His Excellency.

In the debate which took place on Mr. Greeves' motion, an attempt was made to upset the wording of the resolutions, and modify them considerably, but the House voted for the wording being retained. The motion itself, however, on being put to the vote of the House, gained for the Governor and his policy, thus assailed, a victory by one solitary vote. In Governor Hotham's last and unsigned despatch to the Home Government, he just briefly alluded to what was really an attempt to censure his own proceedings, in connection with the proclamation of the Constitution. The only official information concerning the resolutions of Mr. Greeves was, "a motion was made directly impugning the conduct of the Government; a warm debate ensued, and Ministers were only saved from defeat by an insignificant majority." Had the Governor and his Executive, in the first instance, taken the House into their confidence, as to the doubts concerning those who were about to become responsible Ministers, much of the condemnatory language levelled against the Governor and his Executive would never have been heard within the House. There can be no doubt that the Governor made a blunder in issuing that portion of the Minute which has been discussed, and which met with such a stormy reception in the House, and with rejection finally at the hands of the Ministers themselves. As far as the Ministers were concerned, their acceptance of office without an immediate protest against the contents of the Minute laid them justly open to the censure directed against them in Mr. Greeves' resolution. Thus ended the political alarm and struggle which were the direct outcome of the Governor's Minute referring to the introduction of Responsible Government in Victoria. But the re-

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quest made by the Chief Secretary on November 30th for the Governor's withdrawal of the Minute was never granted.

When Mr. Nicholson was trying to form a Ministry after Mr. Haines' Government had resigned owing to their defeat on the question of the *Electoral Act*, he saw Governor Hotham on December 21st, 1855, and during the interview broached the subject of the Minute. The Governor desired Mr. Nicholson to act as if the Minute had no existence. He asked that it should not be mentioned further, and stated that all matters which might arise between himself and his Executive should be settled on their merits without any reference to that document. As Mr. Nicholson ³⁵afterwards explained to the House, Governor Hotham had, in a very constitutional manner, authorised him, without a condition of any kind, to form his Administration. This last reference to the Minute has revealed the fact that whatever motives led Governor Hotham to issue the unfortunate document, he had by this time reconciled himself to accepting Responsible Government, as popularly interpreted. Nevertheless, he did not officially withdraw the Minute.

On December 19th the ballot clauses of the *Electoral Act* brought about the defeat of the Haines' Ministry. "The ³⁶secret ballot" had been made a Ministerial question, and consequently Mr. Haines, the Chief Secretary, handed his resignation to the Governor. But in the meantime Governor Hotham was taken seriously ill. Mr. Nicholson attempted to form a new Ministry, but he was unsuccessful in his efforts. When this news was communicated to the Governor, he became decidedly worse, and early in the afternoon of December 31st, 1855, he breathed

³⁵"Argus," Parliamentary Debates, January 9th, 1856.

³⁶V. and P., 1855, Vol. 1, Part 1, p. 70. See also "History of the Australian Ballot," by Professor E. Scott, "Victorian Historical Magazine," Vol. 8.

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his last. He had only landed about eighteen months previously, and had inherited many accumulated grievances—the result of a policy adopted long before his arrival. The advent of the *New Constitution Act*, and the incidents attendant upon its inauguration, had brought many added burdens to him. He had contributed, no doubt, to the political storm which burst in December; but all his previous training had been for the Navy, not for the political arena. He became practically a martyr to a situation which would have taxed the powers of a Lord Elgin. After all the anticipation of the New Constitution, both by the Governor and the colonists, its arrival and inauguration had brought a season of great political perplexity; upon no one had the mental strain told more heavily than upon the Governor. His career as Governor of Victoria under the *New Constitution Act* was very brief; nevertheless, it has enriched our national history with a mournful but a most instructive episode. The new year of 1856 opened inauspiciously for Victoria, without a Governor or a Government. Major-General Edward Macarthur, the eldest son of the celebrated introducer of merino sheep to New South Wales, became, under the instructions of the late Governor's commission of February 2nd, 1855, the Officer administering the Government. He sent for Mr. Haines, who now, for the third time assuming the reins of Government, acceded to his request that "the secret ballot" should be made an open and not a Ministerial question.

The *New Constitution Act* had received the Royal assent, yet its validity was publicly questioned, because it had undergone alterations and amendments in the Imperial Parliament, without the concurrence or sanction of the Victorian Legislature. It³¹ received a definite challenge when, on February 15th,

³¹V. and P., Part 1, Vol. 1, 1855-6, p. 188.

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1856, a motion was passed in the House by a large majority requesting that the Law Officers of the Crown would lay before the House their written opinions as to whether the *Constitution Bill* could or did possess the force of law in the Colony. The Attorney-General and the Solicitor-General agreed in stating on ²⁸March 12th, with regard to the *Constitution Bill* of 1854, that it did possess the force of law in the Colony, and that its efficacy was due, not to the power of the Colonial, but of the Imperial Legislature, and to the assent given by Her Majesty-in-Council to the Bill as amended (Act of Parliament 18 and 19, Vict. Cap. 55); such assent having been made by the Imperial Legislature a condition precedent to the measure coming into operation.

On ²⁹March 13th, 1856, the *Victorian Electoral Bill* was read the third time and passed. The measures necessary for electing the members of the two Houses under the *Constitution Act* having been completed, it now only remained for the Acting-Governor to bring the political existence of the Legislative Council of Victoria to a close. This took place on March 20th, 1856. Then came the election for the Legislative Council and the Legislative Assembly, and on November 7th of that year, the lists of members for the new Houses were published in the *Government Gazette*. In accordance with Acting Governor Macarthur's proclamation, issued on November 4th, the first Parliament met on November 21st, 1856.

²⁸V. and P., Vol. 2, Part 2, 1855-6, p. 783.

²⁹V. and P., Vol. 1, Part 1, 1855-6, p. 255.

PART 2.

THE EXECUTIVE AND THE LEGISLATIVE
COUNCIL OF VICTORIA.
THEIR ORIGIN AND DEVELOPMENT.
1851-6.

CHAPTER III.

THE EXECUTIVE COUNCIL, 1851-6.

As each Australian Colony was founded, a Governor was appointed by the Home Government, to be its official head. Provision was also made for an 'Executive Council, which the Governor could consult upon all important occasions. At the meetings of the Executive Council, the Governor presided; minutes of the meetings were kept, and from time to time they were forwarded to the Secretary of State. The highest and most responsible officers were usually in the Executive, but the selection of those who formed this Council was not uniform. The usual number in the Executive Council was four or five. The Colonial Secretary and the Treasurer were always members; the holders of the other seats varied. Before the Act of 1842, the Legislative Councils were non-elective, being composed both of official and of non-official members nominated by the Governor. At the meetings of the Legislative Council, the Governor presided, and performed the double office of President and Speaker. In these Legislative Councils, members of the Executive Council took their seats. As all the members of both Councils were nominees of the Governor, and as he presided at their meetings, they rarely thwarted his wishes. In such gatherings there was not much scope for animated debate. As long as the Executive Councillors showed a decent knowledge of their individual departments, and could answer in a conversational way any question relat-

¹In New South Wales the Executive Council came into existence on December 20th, 1825. A body with many of the functions of an Executive Council had, before 1825, assisted the Governor in his public duties, though it did not enjoy the title or the prestige of such a Council. Cramp's "State and Federal Constitution of Australia," p. 14.

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ing to them, they were able to hold their positions without being considered unsuitable for their duties.

When the Act of 1842 came into force, it did away with the wholly nominated Legislative Council in New South Wales and provided for a Council composed of one-third nominees and two-thirds representatives. Over this type of Legislature, the Governor did not preside. His place was taken by a Speaker selected by the House and approved of by the Governor. The introduction of this partly-elected Legislature in New South Wales in 1842 revealed the fact that some of the offices in the Executive Council were filled by men who were not ²competent to take seats in the Legislative Council. Their places in the Legislature were taken by official nominees who possessed the necessary ability. When the Port Phillip District became the Colony of Victoria on July 1st, 1851, and received a partly-elected Legislature, an anomalous political situation arose in Victoria, similar to that which had occurred in New South Wales after the introduction of the blended House in 1842. We shall now examine the circumstances which gave rise to this anomalous political situation in Victoria, and set out and compare, year by year, the lists of the members of the Executive Council with those of the official nominees, who held seats in the Legislative Council. This comparison will extend over the whole period of the Legislative Council from November 11th, 1851, to March 20th, 1856.

Acting under the terms of his ³commission, Lieut.-Governor La Trobe appointed four persons members of his Executive Council on July 16th, 1851. Four was the maximum number permitted by his

²See Chapman's "Responsible Ministries for the Australian Colonies."

³ and ⁴In the office of Clerk of the Executive Council, Treasury Buildings.

The Executive Council.

commission. By Section XVII. of his 'instructions, Lieut.-Governor La Trobe was notified that the following were nominated by the Crown to be members of his Executive Council:—The Crown Prosecutor or Principal Law Officer, the Sub-Treasurer or Treasurer, and the Collector of Customs. Lieut.-Governor La Trobe's appointments fulfilled the requirements of this instruction. Five official nominees were appointed provisionally by the Lieut.-Governor on October 31st of the same year. These appointments were made by virtue of 'powers delegated by Her Majesty to the Lieut.-Governor by warrant under sign manual, dated December 31st, 1850. These five official nominees constituted a virtual Ministry, something similar to the English Ministries before they became responsible to the majority of the Commons.

We shall now examine the Executive and the Legislative Councils for the years ending 1851 and 1852, and see how many of the members of the Executive Council had seats in the Legislature. The members of the Executive and the Legislative Councils at the end of 1851 were:—

EXECUTIVE COUNCIL. LEGISLATIVE COUNCIL (Official Nominees).

<p>President, His Excellency the Lieut.-Governor, Mr. C. J. La Trobe.</p>	<p>Colonial Secretary, The Hon. Colonial Secretary, The Hon. William Lonsdale. Lons Williamdale.</p>
<p>Attorney-General, The Hon. Attorney - General, The William Foster Stawell. Hon. W. F. Stawell.</p>	<p>Colonial Treasurer, The Hon. Alastair Mackenzie.</p>
<p>Collector of Customs, The Hon. James H. N. Cassell.</p>	

<p><i>Not members of the Execu- tive Council</i></p>	<p>{ Solicitor-General. Auditor-General. Chairman of General Sessions.</p>
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*Australian Constitution, p. 380.

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At the end of 1852:—

EXECUTIVE COUNCIL. LEGISLATIVE COUNCIL (Official Nominees).

President, His Excellency the
Lieut.-Governor, Mr. C.
J. La Trobe.

Colonial Secretary, The Hon. Colonial Secretary, The
William Lonsdale. Hon. William Lons-
dale.

Attorney-General, The Hon. Attorney - General, The
Wm. Foster Stawell. Hon. William F.
Stawell.

Colonial Treasurer, The Hon.
Frederick Armand Pow-
lett.

Collector of Customs, The
Hon. James H. N.
Cassell.

Not members of the Execu- { Solicitor-General.
tive Council { Auditor-General.
 { Chairman of General
 { Sessions.

The members of the Executive Council may be considered Ministers "in the Cabinet"; all the official nominees not included in the Executive Council may be classed as Ministers "not in the Cabinet." Out of the "four gentlemen who became Executive Councillors on July 16th, 1851, three had already held official positions under Superintendent La Trobe in the Port Phillip District. Only one change took place in the Executive Council during 1852. Mr. F. A. Powlett became Colonial Treasurer on September the 30th, and an Executive Councillor on

*Captain Lonsdale had been Police Magistrate in the Port Phillip District from September 29th, 1836, to the arrival of Superintendent La Trobe on September 30th, 1839. After Mr. La Trobe's arrival he continued to act as Police Magistrate for eight months, and then became Sub-Treasurer. He occupied the position of Superintendent during the temporary absence of Mr. La Trobe, who was called upon to administer the Government of Van Diemen's Land from October 13th, 1846, to January 25th, 1847. Mr. A. Mackenzie had been the Sheriff, and Mr. J. H. N. Cassell the Collector of Customs under Superintendent La Trobe. Mr. W. F. Stawell, the Attorney-General, was a lawyer, who had been called to the Irish Bar in 1839, and admitted to the Melbourne Bar in 1842. He quickly obtained eminence in every important case, and took a leading part in public matters.

The Executive Council.

October 1st, 1852, owing to the death of Mr. A. Mackenzie. Mr. Powlett had been Commissioner of Crown Lands for Western Port under Superintendent La Trobe, and held that position until his appointment as Colonial Treasurer.

The blanks in the two lists of the official nominees for 1851 and 1852 indicate that certain members of the Executive Council were not given seats in the Legislative Council by the Lieut.-Governor. The exclusion of these Executive Councillors from seats in the Legislature does not imply that the Lieut.-Governor considered that they were all incompetent administrators. On the contrary, some of these members performed their ordinary duties as public officers in a creditable manner. It does mean, however, that these officers had not received that training which would have enabled them to take up readily the duties which were inseparable from their new positions. They were not competent to take seats in the Legislative Council. The Lieut.-Governor appointed in their places official nominees who were able, not only to explain and advocate the measures of the Government in the Legislature, but also to oppose with ability measures brought in by individual members, and considered by the Government to be objectionable or inexpedient. Thus the official bench in the Legislature was kept supplied with the best talent available, but at the cost of exposing the weakness of the Executive Council. We learn, on the authority of Mr. H. S. Chapman, that the Victorian Executive Council at this time was the weakest in all the Australian Colonies. The same authority, however, does not

¹Mr. H. S. Chapman states that in 1851-2 there was a paucity of fluent speakers and debaters amongst the New South Wales Government members; some of them never opened their lips. The Treasurer, the Finance Minister, upon whom naturally devolved the explanation of his budget, was content on the House going into committee on the Estimates, to leave to the Colonial Secretary the task of fighting the financial battle.

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omit to state that the Attorney-General, Mr. F. W. Stawell, was a gentleman of outstanding ability. With regard to the Colonial Secretary, Captain William Lonsdale, who held a seat in both Councils, Mr. G. Turner, in his "History of Victoria," makes the following statement: "The general impression that Captain Lonsdale was weak and wanting in capacity was tempered by the belief that his long experience of local affairs might be counted as a set-off, and it was almost impossible for La Trobe to disregard his seniority in the service of the Crown." The "want of confidence" motion, which was before the Legislative Council on November 23rd, 1852, charged the Executive Council with incompetency in its administration. That the purpose of this motion should have received strong support in the Legislature goes far to substantiate Mr. Chapman's statement concerning the weakness of the Executive Council during the years 1851 and 1852.

At the end of 1853:—

EXECUTIVE COUNCIL. LEGISLATIVE COUNCIL

(Official Nominees).

President, His Excellency
the Lieut.-Governor, Mr.
C. J. La Trobe.

Colonial Secretary, The Hon.
John Vesey Fitzgerald
Foster.

Colonial Secretary, The
Hon. John Vesey Fitz-
gerald Foster.

Attorney-General, Hon. W.
F. Stawell.

Attorney-General, Hon. W.
F. Stawell.

Colonial Treasurer, Hon.
Wm. Lonsdale.

Collector of Customs, Hon.
H. C. E. Childers.

Collector of Customs, The
Hon. H. C. E. Childers.

*Vol 1, p. 341.

*See Parliamentary Debates, "Argus," November 24th, 1852.

The Executive Council.

<i>Not members of the Executive</i>	{	The Surveyor-General.
		The Acting Solicitor-General
		The Auditor-General.
		The Chairman of General Sessions.
		The Acting Chief Commissioner of Police.
		The Chief Commissioner of Goldfields.

The Executive Council underwent considerable change in 1853. ¹⁰Captain Lonsdale's provisional appointment as Colonial Secretary was not confirmed by the Home Government. Mr. J. V. F. Foster was appointed Colonial Secretary of Victoria on July 20th, 1853, by the Duke of Newcastle's despatch of March 19th, and received a seat in both Councils. Captain Lonsdale now became Colonial Treasurer, retaining his seat in the Executive Council, but holding none in the Legislature. Mr. F. A. Powlett, the retiring Colonial Treasurer, became Chief Commissioner of Crown Lands on November 7th, 1853, and was not a member of either Council. Mr. J. H. N. Cassell, Collector of Customs and an Executive Councillor, received a seat as an official nominee in the Legislative Council on August 29th, 1853. His seat was one of the new nominee places created when the number of members in the House was ¹¹increased from thirty to fifty-four. After Mr. Cassell's death, Mr. H. C. E. ¹²Childers, formerly Auditor-General, became Collector of Customs on December 5th, 1853, with a seat in both Councils. Only one Executive Councillor, the ¹³Colonial Treas-

¹⁰Despatches from the Secretary of State, Vol. 3, p. 191, 1853, Treasury Building.

¹¹By an Act passed in Victorian Legislature on January 19th, 1853.

¹²Mr. Childers became a member of the House of Commons in 1860. He occupied the position of First Lord of the Admiralty in 1868, and subsequently rose to be Chancellor of the Exchequer.

¹³Following the analogy of the English Constitution, the Treasurer should have occupied a seat in the Legislative Council. When Sir William Denison, the Lieut.-Governor of Van Diemen's Land, notified Earl Grey on January 10th, 1852, of the official appointments made by him to the Legislature of that colony, he stated that he necessarily gave the Colonial Treasurer a seat in the Legislature. (Australian Constitution, p. 423).

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surer, had no seat in the Legislative Council. Thus the Executive Council by the end of 1853 had become much more efficient for discharging its duties in the Legislature and in administration than during the years 1851 and 1852.

At the end of 1854:—

EXECUTIVE COUNCIL. LEGISLATIVE COUNCIL

(Official Nominees).

President, His Excellency the Lieut. - Governor, Sir Charles Hotham, K.C.B., Captain R.N.	
Colonial Secretary, The Hon. W. C. Haines.	Colonial Secretary, The Hon. W. C. Haines.
Attorney-General, The Hon. W. F. Stawell.	Attorney - General, The Hon. W. F. Stawell.
Acting Colonial Treasurer, The Hon. Chas. Sladen.	
Collector of Customs, The Hon H. C. E. Childers.	Collector of Customs, The Hon. H. C. E. Childers.
Auditor-General, The Hon. Edward Grimes.	Auditor-General, The Hon. Edward Grimes.
<i>Not members of Executive Council</i>	The Acting Solicitor- General.
	The Surveyor-General.
	Colonial Engineer.
	The Chief Commissioner of Goldfields.
	The Acting Chief Commis- sioner of Police.

On "May 21st, 1853, Lieut.-Governor La Trobe wrote to the Duke of Newcastle, requesting that his Executive Council might be increased from four, the maximum number as fixed by his commission, to six. He considered that the existing state and prospects of the Colony rendered such an increase advisable. The Lieut.-Governor suggested that the heads of the Finance and the Police Departments would be suitable appointments. Their advice and

¹⁴Australian Constitution, p. 688.

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assistance, he considered, would be of great service to him in the Executive Council. Almost a year elapsed before an answer came from the Home Government, but on ¹⁵May 4th, 1854, when Lieut.-Governor La Trobe held his last meeting of the Executive Council, he placed on the Council table a ¹⁶despatch from the Secretary of State which authorised the addition of two new members to the Executive Council, as had been requested. The new members were to be the Auditor-General of Accounts and the Superintendent of Police. On the same day, the Auditor-General, Mr. Edward Grimes, was summoned by the Lieut.-Governor to the Executive Council, and took his seat as a member of that body. The Auditor-General was now a member of both Councils. The Lieut.-Governor then announced that, though he was empowered to summon an additional member—the Superintendent of Police—he had resolved not to summon the present Acting-Commissioner of Police, who merely had charge of the Police Department during the absence of the Chief Commissioner, Mr. W. H. F. Mitchell. He was strengthened in his determination, he said, by the remembrance that, during the absence of the Colonial Treasurer of New South Wales, some years ago, his *locum tenens*, the Acting Treasurer, was held to have no title to a seat in the Executive Council. In consequence of Lieut.-Governor La Trobe's decision, the new Lieut.-Governor, Sir Charles Hotham, found his Executive Council composed of five members.

After the departure of La Trobe for England on May 5th, Mr. J. V. F. Foster, the Colonial Secretary, being the senior member of the Executive Council, was sworn in as the Officer administering the Government. This position he retained until the

¹⁵Minutes of the Executive Council, Vol. 1, p. 387.

¹⁶Dated January 8th, 1854.

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arrival of Mr. La Trobe's successor, Sir Charles Hotham, who landed in Melbourne on June 21st, 1854. The other changes in the Executive Council took place after the arrival of Sir Charles Hotham. Mr. J. V. F. Foster voluntarily resigned his office as Colonial Secretary on December 9th, 1854, and consequently gave up his seat in both Councils. Mr. C. Sladen was appointed Acting-Treasurer and Executive Councillor by the Lieut.-Governor on December 29th, 1854, during Mr. Lonsdale's absence in England. Mr. Sladen had no seat in the Legislature till November 28th, 1855.

At the end of 1855, and until the dissolution of the Legislature on March 20th, 1856:—

EXECUTIVE COUNCIL. LEGISLATIVE COUNCIL (Official Nominees).

President, His Excellency the Governor-in-Chief, Sir Chas. Hotham, K.C.B., Capt. R.N. (died December 31st, 1855). Major-General Edward Macarthur was the Officer administering the Government from January 1st to December 25th, 1856.

The Senior Officer Commanding the Troops in Victoria, Major - General Edw. Macarthur (to December 31st, 1855).

The Chief Secretary, The Hon. W. C. Haines.

The Attorney-General, The Hon. W. F. Stawell.

Treasurer, The Hon. Chas. Sladen, *in vice* William Lonsdale, released on political grounds.

Commissioner of Public Works, The Hon. Chas. Pasley, R.E.

The Chief Secretary, The Hon. W. C. Haines.

The Attorney-General, The Hon. W. F. Stawell.

Treasurer, The Hon. C. Sladen.

Commissioner of Public Works, The Hon Chas. Pasley, R.E.

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Commissioner of Trade and Customs, The Hon. H. C. E. Childers.	Commissioner of Trade and Customs, The Hon. H. C. E. Childers.
Surveyor-General, The Hon. Andrew Clarke, R.E.	Surveyor - General, The Hon. Andrew Clarke, R.E.
Solicitor-General, The Hon. Robert Molesworth, <i>in vice</i> James Croke, released on political grounds.	Solicitor - General, The Hon. Robert Molesworth.
<i>Not members of the Executive Council</i>	{ Chief Commissioner of Goldfields. { Acting Chief Commissioner of Police.

The year 1855 witnessed great changes in the Executive Council; the proclamation of the New Constitution on November 23rd brought with it also the beginning of Responsible Government in Victoria. Twice during 1855 Sir Charles Hotham received a new commission. The ¹⁷first one was dated February 2nd, and created him Governor-in-Chief of Victoria. This change from Lieut.-Governor to Governor of Victoria was effected on the departure from New South Wales of the Governor-General of Australia, Sir Charles Fitzroy, in January of that year. The second commission was issued on September 8th, owing to the New Constitution which had been granted to Victoria. Both commissions contained instructions which affected the composition of the Executive Council. With his ¹⁸commission of February 2nd, Governor Hotham received authority to appoint an Executive Council of six members. By Section XVIII. of the ¹⁹instructions issued to him, the Crown nominated the following to be members of the Executive Council:—The Senior Military

¹⁷Little more is heard of the title of "Governor-General of all Her Majesty's Australian Colonies, including Western Australia." It was abolished in 1861, having been held by only two Governors of New South Wales—Sir Charles Fitzroy and Sir William Denison.

¹⁸ and ¹⁹In office of the Clerk of the Executive Council, Treasury Building.

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Officer, the Attorney-General, the Treasurer, the Collector of Customs, the Auditor-General, and the Superintendent of Police. On May 22nd, Governor Hotham reappointed all the five members of the existing Executive Council, and Major-General Macarthur, the Senior Officer commanding the troops in Victoria. The nomination of the Superintendent of Police to the Executive Council, notified to Lieut.-Governor La Trobe on January 8th, 1854, and again on February 2nd, 1855, to Governor Hotham, was not put into effect. The Police Department remained for the time being under an Acting Commissioner of Police. The appointment of Major-General Macarthur to the Executive Council was significant. The discontent of the colonists, owing to the delay of the *Constitution Act* in England, and the unrest among the mining population because of their grievances, probably led Governor Hotham to ask for the inclusion of the Senior Military Officer in the Executive Council. The disturbances at Ballarat in October, November and December of the previous year, were only the climax of discontent which had been manifest there and in other parts of the Colony for many months previously. The appointment of the Senior Military Officer of the Colony as an Executive Councillor followed a practice already well established in other Australian Colonies. Real or supposed danger in the Colonies, either from the natives or from the prisoners of the Crown, probably led to the practice. The trouble from the Maoris in New Zealand, and from the convicts in Van Diemen's Land, doubtless led the Lieut.-Governor of each of those Colonies to appoint the Senior Officer commanding the troops a member of the Executive Council. The practice was also in vogue in New South Wales. For the years 1851 and 1852 the Executive Councils in New South Wales and Van Diemen's Land each had the Officer commanding the troops as the Senior Member of the

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Council. The Governor's commission of February 2nd also gave instructions that, in the case of the death or absence of Sir Charles Hotham, the Senior Military Officer commanding the troops in Victoria should become the Officer administering the Government.

By the second Commission of September 8th, the Governor was instructed to nominate and appoint the members of the Executive Council. Their number was not specified, nor were their appointments provisional, as formerly; those appointed, however, held their seats during the pleasure of the Crown. The New Constitution was proclaimed on November 23rd, and on December 10th, the day on which Sir Charles Hotham was sworn in under his Commission of September 8th, he appointed a new Executive Council. In addition to the Senior Military Officer, he nominated the seven non-elective members of the Legislative Council, who had been appointed by him to that body on November 28th. The offices of these seven non-elective members corresponded with those set out in Section XVIII. of the *New Constitution Act*. They were those of the Chief Secretary, the Attorney-General, the Treasurer, the Commissioner of Public Works, the Commissioner of Trade and Customs, the Surveyor-General and the Solicitor-General.

After the death of Governor Hotham on December 31st, 1855, Major-General Edward Macarthur, who commanded the troops in Victoria, became the Officer administering the Government. He brought the Legislative Council to a close on March 20th, 1856, opened the first Parliament of Victoria on November 21st, 1856, and remained Her Majesty's representative until the arrival of the new Governor, Sir Henry Barkly, who commenced his official duties on December 26th, 1856.

From the foregoing investigation, we can safely draw the following conclusions:—

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- (a) That the members of the Executive Council really formed "the Cabinet," and the official nominees a "quasi-Ministry," some members of which were not "in the Cabinet."
- (b) That the Executive Council of Victoria before 1853 contained members who were not sufficiently competent to warrant the Lieut.-Governor giving them seats in the Legislature;
- (c) That the Lieut.-Governor had to pass over these inefficient Executive Councillors, and appoint to the Legislative Council official nominees who possessed the necessary ability; who, though members of the "quasi-Ministry," were not members of "the Cabinet";
- (d) That between 1853 and 1855 the Executive Council became stronger, not only in numbers and administrative capacity, but also in the possession of more seats in the Legislative Council;
- (e) That the following table represents the number of members in the Executive Council and the number of seats held by its members in the Legislature between the years ending 1851 and 1855:—

Year Ending.	Members of Executive Council.			Executive Councillors with Seats in the Legislature.	
1851	-	4	-	-	2
1852	-	4	-	-	2
1853	-	4	-	-	3
1854	-	5	-	-	4
1855	-	(a) 6	appointed on	-	
			May 22	-	4
		(b) 8	appointed on	-	
			December 10	-	7

CHAPTER IV.

THE LIEUTENANT-GOVERNORS OF VICTORIA. (1851-5.)

Their Political Relationship to the Executive Council.

In this chapter we shall set out, first of all, some of the chief instructions which were issued by the Crown to Lieut.-Governor La Trobe and to Governor Hotham to guide them in their political relationship to the Executive Council. We shall examine, then, as far as possible, contemporary evidence as to what was the *actual* political relationship which existed between the Executive Council and these representatives of the Crown; and, from this evidence we shall see that the extensive but rather vaguely defined powers which the Crown's instructions conferred on its representatives, led La Trobe and Hotham, owing to differences in their training and temperament, to adopt widely different methods of procedure in dealing with their Executive Councils.

Lieut.-Governor Hotham's Commission and Instructions of December 3rd, 1853, were similar in form to those of Lieut.-Governor La Trobe. To the changes made in those furnished to Governor Hotham on February 2nd and September 8th, 1855, we have already made reference in the previous chapter. Both La Trobe and Hotham received the following¹ instructions:—

- (1) Their Commissions and Instructions were to be read to the members of the Executive Council.

¹Taken from the commissions and instructions issued to La Trobe and Hotham by the Crown. (In the office of Clerk of the Executive Council, Treasury Building).

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- (2) The Lieutenant-Governor was to preside at the meetings; and in his absence the Senior Councillor present was to take his place.
- (3) Minutes of the Council's meetings were to be kept, and copies of them were to be forwarded twice a year to the Home Government.
- (4) The Lieut.-Governor was required in all things to consult and advise with his Executive Council.
- (5) In case of emergency, however, he could act without the advice of the Council; but the matter was to be brought "with all convenient speed" before the Council for their revision and sanction.
- (6) In cases which he considered unimportant, the Lieut.-Governor could act without the advice of the Council.
- (7) Only the Lieut.-Governor was permitted to bring questions for discussion to the Council.
- (8) If any member wished to bring up a question for deliberation, he had to apply in writing to the Lieut.-Governor, and propose that it be discussed.
- (9) Any Councillor could require that his written application be recorded in the minutes of the meeting, together with the Lieut.-Governor's answer to it.
- (10) Any member of the Council could cause the grounds or reasons of any advice he gave upon any question discussed at the Council to be entered at full length in the minutes.
- (11) The Lieut.-Governor could reject the advice of a majority or the whole of the Council, but he was to transmit to the Home Government a full explanation of the grounds for so doing, together with a complete copy of the minutes.

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- (12) The Lieut.-Governor had the power of "suspending" any officer appointed by the Crown, subject to certain restrictions which safeguarded the rights of the person suspended, until the decision of the Home Government was made known.
- (13) The Lieut.-Governor could exercise the prerogative of pardon, even against the advice of the whole Council.

From the foregoing instructions, it is quite clear that the Lieut.-Governor could defy the whole of his Council if he so desired; there was ample room for him to play the part of an autocrat if he chose to do so. Still, by rejecting the advice of his Council, the Lieut.-Governor was placed in the position of carrying entire responsibility for the outcome of his political actions. The Councillors were not left hopelessly at the mercy of the Lieut.-Governor, for they could record in the minutes the advice they gave him. The minutes in due course would come before the Home Government, but a long period would necessarily elapse before the Home authorities could take any action. The interpretation and the carrying out of the Crown's Instructions rested upon the character of the Lieut.-Governor; if he chose to work in close union with his Executive Council he could do so; if not, he could take the helm practically alone.

The majority of the members of the Executive Council from 1853 were also official nominees appointed by the Lieut.-Governor to seats in the Legislative Council. As Mr. H. S. Chapman pointed out in his booklet published in 1854, the policy of the Lieut.-Governor was the policy of the official nominees. Professor Jenks, in his "Government of Victoria," touches upon this point when he says: "But to what extent the personal views of the Governor habitually predominated over the views of his advisers it would be impossible for anyone not

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personally familiar with the period to say." We are, however, in the position to cite evidence given upon this very point by Mr. J. V. F. Foster, who was Colonial Secretary of Victoria from July 20th, 1853, to December 9th, 1854; by Captain MacMahon, Acting Chief Commissioner of Police in 1854; and by Captain Kaye, Private Secretary to Sir Charles Hotham. Mr. Foster was Colonial Secretary under Lieut.-Governors La Trobe and Hotham, and had a seat in both Councils. Captain MacMahon was an official nominee, appointed by La Trobe, and in office also under Hotham. ²The evidence of these three gentlemen was given in August, 1867, when a Select Committee, appointed by the House, conducted an inquiry into Mr. J. V. F. ³Fitzgerald's (Foster) claim for a pension from the Government. Mr. Foster's position, while Colonial Secretary, furnished him with unrivalled opportunities of becoming familiar with the political situation of the Executive Council with regard to the Lieut.-Governors. He stated that Lieut.-Governor La Trobe frequently sought his advice on political matters. In support of this statement, Mr. Foster pointed out certain portions of one of La Trobe's speeches to the Legislature. These related to the abolition of the license fee and the substitution of an export duty on gold, and had been inserted at his instigation. His relationship with Governor Hotham was different. The speech Hotham delivered to the Legislature on November 23rd, 1855, was palpably his own work. In it he regretted that the new members for the mining districts were not present; five were present. Mr. Foster further stated that Sir Charles Hotham rarely asked him for advice, and from the beginning of his Governorship took all matters, great and small,

²V. and P., Legislative Assembly, Vol. 2, pp. 425-65.

³Mr. J. V. F. Fitzgerald is identical with Mr. J. V. Fitzgerald Foster, who resigned his position as Colonial Secretary of Victoria on December 9th, 1854.

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into his own hands. It was not, he said, the Governor's habit to consult the Executive Council as to his future policy. There was a number of matters upon which he was bound by law to consult the Colonial Secretary, *pro forma*, such as issuing grants for certain purposes, and commutation of capital sentences; but it was not his habit to consult the Executive prior to adopting any particular line of policy. This, Mr. Foster thought, was largely due to the very faulty and anomalous nature of the Constitution, and to the fact that the functions of the Governor and his advisers were never laid down accurately. Sir Charles Hotham was accustomed, from his naval education, to act for himself. He could not recollect any one occasion on which the Lieut.-Governor called the Executive together and consulted them as to his future policy. Sir Charles Hotham usually came into Melbourne about twice a week. All papers were sent out to him daily to Toorak, and they were returned with the Governor's minutes written thereon. Mr. Foster said he had often to carry out these instructions without having had any interview with the Governor. He had often remonstrated with Sir Charles Hotham when he considered his instructions erroneous. He thought that at last the Governor began to look upon him as more inclined than any one else to thwart him. He therefore ceased to remonstrate except on some extraordinary occasions. He considered that Governor Hotham was the most self-willed man he had ever met. At the same time, he was a man continually asking advice from people "out of doors."

With reference to his duties in the Legislature as Leader of the House, Mr. Foster said that he had often to support the Governor's measures, even when not approving of them. He quoted one striking incident. Governor Hotham adopted a proposal suggested to him by one of his "outdoor advisers."

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It was to impose an *ad valorem* duty of 10 per cent. on all imports. The first that either he, as Colonial Secretary, or any of his officers heard of it was an instruction that they were to introduce it into the House the following day. None of them approved of it. They had not even heard of the suggestion before, nor did they know from whom it had emanated. As Colonial Secretary, Mr. Foster said he was continually being asked questions in the House, and received instructions from the Governor to answer them *verbatim*, as he directed. At this enquiry, Mr. Foster read one of the Governor's instructions to him. The word "*verbatim*" was underlined. The letter, with the accompanying instructions, he cited as evidence of how far the Governor interfered with his legislative action as Colonial Secretary. The letter was—

"Dear Sir,—In reply to Mr. Hervey's question, I have to desire that the words employed in the enclosed note be used *verbatim*.

"Very truly yours,

"CHARLES HOTHAM."

November 28th, 1854.

The following was the note to be read "*verbatim*":—

"The Committee of Finance have not yet gone into the consideration of the Estimates of 1855, which were framed by several officers of their respective departments. The Committee of Finance have reported to His Excellency upon the financial position of the Colony, as shown in those Estimates, with a view to provide means to meet the proposed expenditure. His Excellency has availed himself of the information and advice thus offered on his minute on the Supplementary Estimates for 1854 and the Estimates for 1855. His Excellency does not think it advisable in this present stage of enquiry to pro-

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duce reports which are of a confidential nature ; but he takes the opportunity of expressing his obligations to the gentlemen who have thus afforded him the benefit of their experience." November 29th, 1854.

Mr Foster pointed out that, under the system of Government in Victoria before the introduction of Responsible Government, the Governor was supreme ; he was not bound to follow the advice of the Executive Officers. It was their duty to give their advice, when asked. The policy of the Governor was the policy of the Government. He was answerable for it to the Imperial Government and to nobody else. Similar opinions were expressed at the same enquiry by Captain MacMahon, Acting-Chief Commissioner of Police, in 1854. He stated in his evidence that he believed the Governor was directly appointed from England, with the intention that he should exercise such control and power as he thought fit. The Executive of that day was merely a Council of Advice. The Governor interfered directly with all the executive details of the country.

Valuable evidence on the political relations between the Governor and the Executive was also given by Captain Kaye, R.N., Private Secretary to Sir Charles Hotham. He was asked by the Committee whether it was a fact that the Governor undertook the general supervision of the different departments. In reply, Captain Kaye said that Governor Hotham considered that the Executive had leagued themselves against him to oppose his efforts to restrict the enormous expenditure that was going on. The Governor had attempted a task beyond any man's strength. He took all the papers connected with the Government of the Colony and read them for himself. The effort proved too much for him, and practically caused his death.

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In addition to Mr. Foster's evidence, further proof of La Trobe's harmonious relations with his Executive Council is furnished by the Minute Book of the Executive Council for his term of office. 'The record of the Executive Council meeting held on July 29th, 1851, shows that Lieut.-Governor La Trobe sought the advice of the members of the Council with regard to his action in omitting Mr. J. Croke, formerly Crown Prosecutor in the Port Phillip District, from an official place in the new Colony of Victoria. Also, at the last Executive meeting held by Lieut.-Governor La Trobe on May 4th, 1854, he took the opportunity of thanking the Council for the zeal and diligence which they had always shown in their dealings with him. There was, the minutes of the meeting records, "but one unanimous appearance and expression of kindliness of feeling between His Excellency and the Council." Before the Lieut.-Governor left the Council Chamber, he was shown the minutes referred to, and gave his approval of them.

One further piece of evidence confirming Mr. Foster's statement of Governor Hotham's independent action when dealing with the Executive Council is forthcoming from the 'minutes of the meeting of that body, held on October 30th, 1855. They show that a very long discussion took place as to whether or not the Legislative Council should be summoned to meet on November 23rd. All the members of the Executive Council except one, Major-General Macarthur, agreed that the Legislature should not be summoned for despatch of business before November 27th. This they desired because the writs for the elections about to take place on the various goldfields were not returnable until November 26th. The Governor, however, rejected

⁴Vol. 1, p. 5.

⁵Vol. 1, p. 391.

⁶Vol. 2, p. 119.

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the advice of the majority of the Executive Council, and directed that a special minute, which he dictated, should be entered in the record of the proceedings of the meeting. In this minute he stated the reasons which led him to reject the advice of an almost unanimous Executive Council. On November 23rd, the House assembled, and the Proclamation of the New Constitution took place.

From the foregoing evidence we can safely state—

- (a) That Lieut.-Governor La Trobe not only sought and acted upon the advice of the Executive Council, but also that amicable relations existed between himself and that body;
- (b) That Governor Hotham desired to become conversant with the financial and economic conditions of Victoria, and to that end endeavored to master those details of public business which usually devolve upon the heads of departments;
- (c) That Governor Hotham not only frequently rejected the advice of his Executive Councillors, but also at times sought counsel elsewhere;
- (d) That Governor Hotham brought his policy to the Executive in a final form, and looked upon the members of that body as mere instruments to carry it out, if possible.

Thus we have seen that a representative of the Crown might rely on his Executive Council and take it into his confidence, as did Lieut.-Governor La Trobe; or he might, in a marked degree, withhold his confidence from it and often act independently, as did Governor Hotham. As a partial explanation of the different lines of conduct adopted by La Trobe and Hotham, it should be remembered that the former had been in the Port Phillip District long before its separation from New South Wales, and had surrounded himself, as the Lieut.-

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Governor of Victoria, with Executive Councillors of his own choice, men whom he had known for many years. But in Governor Hotham's case, the circumstances were different. He came into a strange country, full of perplexing problems caused by the discovery of rich goldfields. In the Navy, his career had been a successful one, but the qualities which had made him a successful naval commander were not alone sufficient to secure harmonious relationship with his Executive Council.

CHAPTER V.

THE BLENDED HOUSE.

Its Origin and Development.

When the Port Phillip District was separated from New South Wales on July 1st, 1851, by the *Australian Colonies Government Act* of 1850, provision was made by that Act to give the newly-created Colony of Victoria a 'single Legislature, one-third of whose members were to be nominees of the Crown, and two-thirds representatives of the people. New South Wales had possessed such a Legislature since 1842. We shall first of all investigate the origin of this blended Legislature in Australia, tracing the developments it underwent in the Colony of Victoria between 1851 and 1856, and noting some interesting facts connected with nomineeism, not only in Victoria, but also in New South Wales and Van Dieman's Land.

Until the ^scommencement of the nineteenth century, it was almost invariably the custom of the Home Government to establish local legislatures in the Colonies of Great Britain. Each of these legislatures consisted of two chambers, one being a Council nominated by the Governor, and the other an Assembly elected by the people. Though in some cases other schemes of Colonial policy had been at first established, these had all, with the exception of Sierra Leone, been brought progressively into conformity with this general type or model, before the end of the eighteenth century. With the founding of New South Wales in 1788, the usual double chamber was not established. The settlement at

¹See "The Beginning of the Second Chamber in Australia," by Professor H. Moore, LL.D., University of Melbourne. "Victorian Historical Magazine," Vol. 2.

²Australian Constitution, pp. 83-4.

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Port Jackson was at first purely penal in character, and the Governor's powers were despotic. Naval and military officers assisted him in the administration of the Colony. In 1823, the *New South Wales Judicature Act* provided the Governor with a small nominated Legislature of from five to seven members—the first Legislative Council in Australia. Even under the Act of 1823 the Governor's powers were almost those of an autocrat. In 1828 the existing Act was modified by "An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land and the more effectual Government thereof." This Act stated that it was not deemed expedient by Parliament to call a Legislative Assembly; in its place the numerical strength of the existing Legislative Council was increased. The nominated members were not to exceed fifteen, or be less than ten, in number. At the meetings of these nominated Councils, the Governor—himself a nominee of the Crown—presided. In June, 1832, a petition from the free colonists of New South Wales for a Representative Assembly came before the House of Commons, and a proposal was then made by several members that a certain proportion of the New South Wales Legislative Council should consist of elected members. This suggestion was rejected by the House.

After a few years the colonists of New South Wales became more and more dissatisfied with the form of Government allotted to them. The devotion of a portion of the ¹⁰Land Sales Fund to assist emigration from the United Kingdom to Australia and the abolition of transportation to New South Wales in 1840, led to a steadily-increasing agitation, which had, as its

⁹Hansard (Commons), June 28th, 1832, Vol. XIII.

¹⁰See "Colonization of Australia, 1828-42," by Dr. R. C. Mills, pp. 178-80 and 201.

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chief aim, the introduction of a system of government which should include representatives of the people in the Legislature of New South Wales. "The Australian Patriotic Association," founded in 1835, with Sir J. Jamison as President, and Mr. W. C. Wentworth as Vice-president, made this object clear in its first "annual report. The desire of the Patriotic Association was to obtain for the free inhabitants of New South Wales a *bona fide* representative Government. Mr. Henry Lytton Bulwer, M.P., offered to become the Association's Parliamentary Agent in England. His offer was accepted, and as a guarantee of their genuine desire to obtain a representative form of government for New South Wales, the members of the Association entered into a bond to provide £1200 per annum for four years, to defray expenses incurred in England in the promotion of their aims. When Mr. Bulwer resigned his position, Mr. C. Buller, Jun., M.P., who was with Lord Durham in Canada in 1838, took his place, and worked very actively in the interests of the Association.

In a ¹²despatch to Lord Glenelg, the Colonial Secretary, dated April 13th, 1836, Sir Richard Bourke, the Governor of New South Wales, alluded to the expectation amongst the colonists of a new Act, which would improve the government of that Colony. He enclosed printed copies of two petitions from them, setting out some of the political desires of two distinct sections of the colonists. One petition had three hundred and ninety-eight signatures, which were obtained at one meeting, and two of its most influential supporters were Messrs. H. H. and James Macarthur. It pointed out that the Act then in force was largely inoperative, because the members of the Council were mostly Govern-

¹¹Report of the Directing Committee of the Australian Patriotic Association for the year ending July 1st, 1836.

¹²Accounts and Papers, 1846, Vol. XXIX., pp. 14-20.

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ment officials, and also because the Council's debates were not open to the public. The presence of the Governor at such Council meetings was considered a hindrance to free expressions of opinion. The supporters of the petition thought it was still questionable whether the Colony was ready to participate in the free institutions of England. They certainly desired to set aside the "crude and dangerous innovations" which the Home Government had thought of giving them. These innovations, which proposed the creation of municipal bodies throughout the Colony, and the establishment of a certain degree of control on the part of these various bodies over the legislative actions of the Governor and the Council, were also strongly opposed by the Patriotic Association. Speaking of the same scheme, Mr. "Buller said, "I believe I am stating the outlines of this plan fairly when I say that it proposes that the Governor and the Council shall make laws; that these laws so made shall be submitted to the various municipal councils, and discussed by them; and that the power of these councils is not to extend to the amendment or rejection of the laws, but that a majority of the councils may, by disapproving of a law, suspend the operations until it shall have been referred back to the Mother Country." In the first mentioned petition, forwarded by Governor Bourke, the petitioners did not desire a representative Government, but a larger Council, and the rectification of the drawbacks which they had enumerated.

The other petition, Governor Bourke pointed out, contained over six thousand signatures. These petitioners considered that the Legislative Council, as then constituted, was inadequate for the exigencies of the Colony, and had no hold on public confidence. They opposed the idea of a still larger and

¹¹"Port Phillip Patriot," December 2nd, 1839.

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more irresponsible Council, and requested that, at the expiration of the existing Act, a representative Assembly, upon a wide and liberal basis, might be introduced. Such an Assembly, they considered, should be composed of not less than fifty members, three-fourths of whom should be elected by the people. The remaining fourth was to consist of members nominated by the Crown. Dr. Bland, the Corresponding Secretary of the Australian Patriotic Association, was a strong supporter of the plan proposed in this petition; other members preferred an Upper House of nominees, and a Lower House of elected members. When referring to these petitions, in a later despatch, on July 25th, 1836, Governor Bourke candidly stated that he believed the vast majority of the colonists capable of forming sound opinions desired a Legislature either wholly or in part representative.

At a public meeting held in Sydney, on May 30th, 1836, of those who supported the first mentioned petition, Mr. James Macarthur, who was shortly to visit England, was requested to be the bearer of the petition to the Home Government. He agreed to this, and promised to urge its requests, not only upon the Colonial Office, but also upon influential members of Parliament. These duties he undertook to carry out without remuneration.

In England, Mr. C. Buller, Jun., M.P., and Mr. J. Macarthur drew up the rough "draft of a Constitution, which they believed would suit the peculiar conditions of New South Wales and Van Diemen's Land. This Mr. Buller forwarded to the Colonial Office, and enclosed with it a letter, in which he expressed his views upon the political situation of New South Wales. He pointed out that the greatest amount of content and harmony in New South Wales and Van Diemen's Land would be

¹⁴"Port Phillip Patriot," December 2nd, 1839.

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secured by allowing those Colonies, as much as possible, to govern themselves. He further stated, "You must either stop free emigrants from coming to these Colonies, or you must make up your minds to expect that a large population of free intelligent Englishmen will not submit to the restraints of a fortress or a gaol."

When the news of this Constitution, proposed by Mr. Buller and Mr. Macarthur, reached the Port Phillip District, it was stated in the *Port Phillip Patriot* that in all probability the new Act for the government of New South Wales would contain much that was set out in this scheme. When the Act of July 30th, 1842, which was entitled *An Act for the Government of New South Wales and Van Diemen's Land*, reached New South Wales, it certainly contained portions very similar to some of the proposals set out in the Buller-Macarthur Constitution. We shall notice here only those resemblances which refer to the subject of the blended House.

In Paragraph 10, the proposed Constitution suggested that the Colonial Legislature should be comprised of the Governor and the Assembly; that there should be twelve official, and about twice as many elected members, these latter to be returned by the different districts according to their population. In the same paragraph, Mr. Buller stated that he had fixed the proportion of the nominated to elective members in the ratio of one to two, because he thought it most important to guard against the evil adverted to in the papers he had received from the Colonial Office, namely, of causing jealousy and absolute separation between the nominees of the Crown and the representatives of the people. This appeared to him only possible by preventing the former from ever being able to out-vote the latter. He had noted, he said, that no suggestions from

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the Colonial Office ever advocated a second Chamber; he quite agreed that there should be no Legislative Council. The greater part of the recommendations which were set out in this paragraph were embodied in Sections I. and IV. of the Act of 1842. In almost prophetic words, Mr. Buller pointed out in Paragraph 13 that there would be great difficulty in getting representatives, and that in all probability the remote districts would have to select persons resident in Sydney. The Act of 1842, in Section II., allotted six elective members to the remote Port Phillip District, and the colonists of that part of New South Wales experienced precisely the difficulty foretold by Mr. Buller. From this investigation, we can safely conclude that the provision in the Act of 1842 for a blended House, instead of an Upper and a Lower House, owed not a little to the roughly-drafted Constitution prepared by Mr. C. Buller and Mr. J. Macarthur, and forwarded to the Colonial Office.

Somewhat similar ideas concerning a blended House had been put forward by Henry Walker Parker, barrister-at-law, in 1833, in a pamphlet, entitled "The Rise, Progress and Present State of Van Diemen's Land, with Advice to Emigrants." Though in this publication, the writer made special reference to the nominated Council assisting the Lieut.-Governor of Van Diemen's Land, his criticism of the form of Government in that island was equally applicable to the Council of New South Wales. He affirmed that the Council, as then constituted, did not meet with the approval of the generality of the colonists. Though convinced that the time had not yet arrived when legislation by popular representation could be introduced, still he considered that the community at large should be allowed to recommend half the members of the Council.

Another interesting piece of evidence which deals with the circumstances attending the origin of the

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blended Legislature was given in an ¹⁵address delivered by Mr. R. Lowe, afterwards Viscount Sherbrooke, to the members of the Colonial Reform Society, in their room at Charing Cross, London, on June 1st, 1850. Mr. Lowe's speech was upon *The Australian Colonies Government Bill*, which was then under discussion in Parliament. Much interest was aroused by this speech, because Mr. Lowe had been in the Legislature in New South Wales, both as a Crown nominee and as an elective member. In his speech, Mr. Lowe gave an account of how the system of a mixed House came to be introduced into New South Wales in 1842. He stated that the Government in 1841 was placed in a very peculiar dilemma. The convict community of New South Wales—a community deeply tainted—had solicited from the Home Government representative institutions. To accede to the request was to make a great and perilous experiment. ¹⁶Nobody could wonder that any Government, realising the responsibility it was incurring, would shrink from trying this experiment. To grant a fully representative Government, and afterwards to find it necessary to withdraw the privilege, would be to create an awkward situation. This the Government

¹⁵Australian Pamphlets, Vol. 53, Commonwealth Parliament Library.

¹⁶A somewhat similar situation occurred later with regard to Van Diemen's Land. When Sir J. Pakington, by despatches dated December 15th, 1852, invited the Legislatures of New South Wales, Victoria and South Australia to draft constitutions suited to the needs of their respective colonies, he did not extend the invitation to the Legislature of Van Diemen's Land.

On August 25th, 1853, the Lieut.-Governor of Van Diemen's Land wrote to the Duke of Newcastle, the Colonial Secretary, concerning this omission. He said, "I can fully understand the reasons which induced Sir J. Pakington to delay the concession of similar powers and privileges to the inhabitants of Van Diemen's Land; but as those reasons have now, in consequence of the cessation of transportation, ceased to operate, I trust that your Grace will allow me to express the hope that a distinction, which must necessarily prove invidious, may no longer be made between this colony and those on the mainland of Australia." (Australian Constitution, p. 782).

The Legislature of Van Diemen's Land received the desired concession by a despatch dated January 30th, 1854. (Ibid., p. 786).

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avoided by adopting the plan of the blended House. The experiment had already been tried in Newfoundland, to meet a temporary emergency there, and prevent discord and disagreement between the nominees and representatives, whose controversies had stopped the whole course of public business. Mr. Lowe did not consider such a system was an effective machine for carrying on a good government. At the same time, he judged it to be one which might be applied to a Colony with comparative safety, in order to show how far society there was fit for representative institutions. He further regarded it as a sort of caution or security which the Home Government had taken, so that if the institution did not work well, as little harm as possible should be done by it. He also thought that the nominee principle prevented the convict element from becoming predominant in this single Legislature. At first the system had worked well, because of the fine material in the House; but he was of the opinion that, at a later period, the presence of the Crown nominees tended to bring the Home Government into collision with the Colony. In support of his statements concerning this blended House and the nominee element in it, Mr. Lowe claimed to possess the most weighty evidence obtainable. His former position as Crown nominee had given him an unrivalled opportunity of studying the whole political situation in the Colony of New South Wales.

Further light upon the rise of the blended House is to be found in the Right Hon. C. B. Adderley's "Review of Earl Grey's Colonial Policy of Lord J. Russell's Administration (1853)." This review, published in 1867, commented upon the mixed form of government, as instituted in 1842, and said that the colonists were supposed to have wanted the

¹¹Page 100.

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system; and also, after its introduction, Earl Grey became so enamoured of the system that he dilated upon the advantage of a single Chamber for all the Colonies.

Still another reference to the blended House, and incidently to nomineeism, is to be found in one of Dr. D. Lang's ¹⁸letters. Dr. Lang, who had been an elected member for the Port Phillip District in the New South Wales Legislature, was residing in London in 1849. He wrote to Benjamin Hawes, M.P., and Under Secretary of State for the Colonies, with reference to the *Australian Colonies Government Bill*, then being discussed in Parliament. After reviewing how, under Lord Stanley, a blended House was formed by way of experiment, instead of the old Colonial system, he expressed regret that the proposed Act should purpose retaining that type of Legislature. He attacked the nominee element in such a House, and considered its presence there to be contrary to the wishes of the colonists. Such a system he considered unconstitutional, because it was a universally acknowledged principle of the British Constitution that the people's money was the people's own. No person whatever could have the right to vote it away, except those whom the people had expressly chosen for the purpose. He pointed out that what the House of Peers was precluded from doing by the Constitution, the nominees under the proposed Act were empowered to do. They could vote away the people's money.

In spite of the protests made by Mr. Lowe and Dr. Lang against the retention of nominees in the single House, the British Government passed *The Australian Colonies Government Act* of 1850, and retained therein that section of the Act of 1842 which provided for the presence of one-third nominees in

¹⁸"Remarks on the Proposed Constitution for the Australian Colonies," in a letter to Benjamin Hawes, M.P., Under-Secretary of State for the Colonies, by Dr. D. Lang, June 17th, 1849, London.

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the single Legislature. Under Section III. of the Act of 1850, the Legislature of New South Wales divided Victoria into sixteen electorates, and fixed the number of members in the Legislature of that Colony at thirty. Ten members were to be nominees; the remaining twenty were to be elected representatives. The following table shows clearly the allotment of the representatives for the first Victorian Legislative Council, which opened its first session on November 11th, 1851:—

Number of Members.	¹⁹ Electorates.		Population, 1851.	
2	-	North of Yarra	13,092	} - 17,469
		South of Yarra	4,377	
1	-	Grant	-	- 4,469
	-	Follett	648	} - 3,064
1	-	Normanby	1,505	
	-	Dundas	911	} - 2,764
1	-	Villiers	2,705	
	-	Heytesbury	59	} - 1,603
1	-	Ripon	814	
	-	Hampden	789	} - 1,944
1	-	Grenville	392	
	-	Polwarth	1,552	} - 2,251
1	-	Talbot	893	
	-	Dalhousie	790	} - 879
	-	Anglesey	568	
	-	Mornington	}	} - 1,770
1	-	Evelyn	}	
1	-	Gippsland	-	- 2,693
1	-	Murray District	-	- 1,127
1	-	Loddon District	-	- 2,019
1	-	Wimmera District	-	- 23,143
3	-	Melbourne	-	- 8,243
2	-	Geelong	-	} - 2,372
1	-	Portland	1,025	
	-	Belfast	964	} - 1,550
	-	Warrnambool	383	
	-	Seymour	117	} - 1,137
	-	Kyneton	296	
1	-	Kilmore	-	

¹⁹Australian Constitution, p. 432.

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SUMMARY.

3	-	Two Agricultural Counties	-	21,938
7	-	Seven Intermediate Districts, including Gippsland	-	14,275
3	-	Pastoral Districts	-	5,839
7	-	Four Urban Districts	-	35,308
<hr/>				
20				77,360

From this table it can be seen at glance that the allotment of members was not made upon a basis of population. Evelyn and Mornington, with a combined population of only 879, received a representative, while Melbourne, with 23,143 inhabitants, received only three members. Whatever the defects of this distribution of seats may have been, still Victoria secured a partly representative system. It might have been otherwise, for when Mr. La Trobe was Superintendent of the Port Phillip District, he advised the Home Government against introducing representatives into the Legislature of the new Colony of Victoria. Unlike Mr. Lowe and Dr. Lang, he favored the nominee element in the Legislature so much that he desired a wholly nominated House. He considered that the colonists of the Port Phillip District were not fitted to have representatives yet. Fortunately for Victoria, the Home Government did not follow Mr. La Trobe's advice.

The following gentlemen formed the first blended Victorian Legislature, at its opening on November 11th, 1851:—

²⁰Official Nominees—

William Lonsdale, Esq., Colonial Secretary.
 William F. Stawell, Esq., Attorney-General.
 Charles H. Ebdon, Esq., Auditor-General.
 Redmond Barry, Esq., Solicitor-General.
 Robert Williams Pohlman, Esq., Master-in-Equity.

²⁰The Act of 1850 did not say that half of the nominees should be official. Lieut.-Governor La Trobe selected half to be official nominees under powers delegated to him by Her Majesty on December 31st, 1850. (Vide Australian Constitution, p. 380). Their appointments were made provisionally; they were subject to review by the Colonial Office, which, on more than one occasion, rejected appointments made by Lieut.-Governor La Trobe.

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Non-Official Nominees—

Alexander Cunninghame Wallace Dunlop, Esq.
Charles James Griffiths, Esq.
William Clarke Haines, Esq.
James Hunter Ross, Esq.
Andrew Russell, Esq.

Electives—

William Westgarth	William Rutledge
James Stewart Johnston	Peter Snodgrass
John Thomas Smith	Robert Robinson
Adolphus Goldsmith	William Francis Splatt
Robert Turnbull	James Ford Strachan
Thomas Wilkinson	John Henry Mercer
Francis Murphy	James Frederick Palmer
Henry Miller	John O'Shanassy
John Pascoe Fawcner	William Campbell
Charles Hilton Dight	Thomas Hamilton Osborne

Under normal conditions this Council might have effectively managed the public business of Victoria, but the discovery of rich goldfields in 1851 produced an abnormal state of affairs. The tide of emigration which set in towards the shores of Victoria soon very considerably increased the duties of the Legislative Council; it was felt that a stronger House, numerically, was necessary in order to cope with the business of the Colony. So on November 16th, 1852, a Select ²¹Committee was appointed to consider and report upon the propriety of increasing the number of the members of the Council. When the Committee's ²²Report was presented to the House on December 9th, it recommended that the number of members should be increased from thirty to fifty-four. The report of the Committee was adopted by the Council, and the allotment of the new representatives was as follows:—

²¹See Parliamentary Debates, "Argus," November 17th, 1852.

²²See Parliamentary Debates, "Argus," December 10th, 1852; also V. and P., 1852-3, Vol. 2, Part 1, p. 537.

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"SCHEDULE.

	Present number of members returned.	Proposed additional number.
Melbourne	- 3	- 3
North Bourke	- 2	- 1
South Bourke	- 1	- 1
Geelong	- 2	- 1
Grant	- 1	- 1
Ripon, Hampden, Grenville, and Polwarth	- 1	- 1
Villiers and Heytesbury	- 1	- 1
Belfast and Warrnambool	- 1	- 1
Portland	- 1	- 1
Normanby, Dundas and Follett	- 1	- 1
Talbot, Dalhousie and Anglesey	- 1	- 1
Kilmore	- 1	- 1
Wimmera	- 1	- 0
Loddon	- 1	- 1
Murray	- 1	- 1
Gippsland	- 1	- 0
	<hr/> 20	<hr/> 16

An Act to give effect to this wish of the Legislature was "assented to on January 19th, 1853. The enlarged House met for the first time on August 30th, and the new members were:—

Official Nominees—

Andrew Clarke, Surveyor-General.

The Hon. James Horatio Nelson Cassell, Collector of Customs.

William Henry Wright, Chief Commissioner of the Goldfields.

William Henry Fancourt Mitchell, Chief Commissioner of Police.

Non-Official Nominees—

James Graham, Edward Nucella Emmett, William Highett, Edward Stone Parker.

*V. and P., 1852-3, Vol. 2, Part 1, p. 538.

"Australian Constitution, p. 686.

"An Act to alter 'The Victorian Electoral Act of 1851,' and to increase the number of members of the Legislative Council of the Colony of Victoria." Act XXIX.

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Electives—

Henry Langlands (after-wards unseated by Frederick James Sargood)	Melbourne
James Murphy	"
John Hodgson	"
James Cowie	Geelong
George Annand	North Bourke
John Dane	South Bourke
William Clarke Haines	Grant
James Henty	Portland
Mark Nicholson	Belfast and Warrnambool
Patrick O'Brien	Kilmore, Kyneton and Seymour
George Winter	Villiers and Heytesbury
William Thomas Mollison	Talbot, Dalhousie and Anglesey
James Thomson	Ripon, Hampden, Grenville and Polwarth
Charles James Griffiths	Normanby, Dundas and Follett
Matthew Hervey	Murray
John Goodman	Loddon

Notwithstanding the increase in the Legislative Council, the majority of the gold miners of Victoria were not entitled to vote for the return of members to the Legislature. This grievance, along with the discontent over the gold licensing system, led to disturbances on the goldfields, and to the Eureka Stockade incident at Ballarat in December, 1854. After the conflict with the miners, the Lieut.-Governor, Sir Charles Hotham, appointed a Commission to report on the state of the goldfields. Amongst other suggestions made by the Commission in its "report were these:—

- (1) That the miners should be granted political rights;
- (2) That the electoral districts should be at once altered, and arrangements made to

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admit eight additional elective and four additional nominee members to the blended House.

As a result of these recommendations, Sir Charles Hotham, on March 29th, 1855, transmitted a Bill to the Legislature to give effect to the proposals of the Commission. "On May 16th, 1855, this Bill passed its third reading, and for the second time the Legislative Council was increased in numbers. Twelve members were to be added, eight electives and four nominees. For some reason not known, the Lieut.-Governor filled only one out of the four places for nominees. This was probably because the arrival of the New Constitution for Victoria was considered to be imminent. Dr. Owens was the non-official nominee appointed, though the Lieut.-Governor was well aware of the democratic opinions of that gentleman.

The following were the new representatives:—

Vincent Pyke	Castlemaine
James Atkin Wheeler	"
Robert Benson	Sandhurst
Robert McPherson Grant	"
Peter Lalor	Ballarat
John Basson Humffray	"
Daniel Cameron	Ovens
Duncan Longden	Avoca

By appointing only one instead of four nominees, the Lieut.-Governor disturbed the proportion of nominees to elected members which was required by the Act of 1850. Instead of sixty-six members in the Legislative Council, there were only sixty-three—forty-four elected members and nineteen nominees, nine of whom were official. These figures remained unchanged until the dissolution of the

²⁶"An Act to further alter 'The Victorian Electoral Act of 1851,' and to increase the number of members of the Legislative Council of Victoria." Assented to on May 22nd; gazetted May 25th. Act XXXIV.

The Blended House.

Legislature. With the proclamation of the New Constitution on November 23rd, 1855, the life history of the blended House in Victoria came near to its closing days. It passed through a short but stormy political period after November 23rd, and finally ceased to exist on March 20th, 1856. The first Parliament of Victoria, with its elected Upper and Lower Houses, met for the first time on November 21st, 1856.

CHAPTER VI.

OFFICIAL AND NON-OFFICIAL NOMINEES.

Some Resignations Under Special Circumstances.

In the previous chapter we have seen how nominees came to be in the blended Legislatures in Australia, between 1842 and 1855. The official nominees formed what Mr. H. S. Chapman called a "quasi-Ministry," some members of which were "in the Cabinet"; as such the Governor looked to them for implicit obedience to his wishes. His policy was, for the "quasi-Ministry," the policy of the Government. The non-official nominees were usually selected by the Governor, because they were moderate in their political views, or were men of no politics at all. Such members were not likely to show the Government any serious opposition. We shall now investigate some resignations of official and of non-official nominees, who resigned under circumstances quite distinct from those ordinarily incidental to political life.

Our first case for examination is the resignation of Mr. W. C. Haines, who afterwards became Colonial Secretary of Victoria. That gentleman was appointed a non-official nominee on October 31st, 1851. ¹Before he took his seat in the Legislature, he inquired from the Government whether it was intended to issue leases of Crown lands to the squatters under the Orders-in-Council of March 9th, 1847. He was informed that the leases would not be issued. Upon that consideration alone did he take his seat in the House. When he found that the Government had altered their views upon the subject, and were determined to issue the leases, he re-

¹ and ²See "Responsible Ministries," by H. S. Chapman.

²See speech by Mr. Haines, "Argus," August 16th, 1852.

Official and Non-official Nominees.

signed his seat as a nominee. On June 6th, 1853, Mr. W. C. Haines became an elected member for Grant.

³Another case is the resignation from office of Mr. C. H. Ebdon, the Auditor-General, who was appointed to that position on October 31st, 1851. In Mr. Chapman's opinion, there were at that period only two official nominees really capable of conducting the business of the Government. One was Mr. F. W. Stawell, the Attorney-General; the other was Mr. C. H. Ebdon, the Auditor-General. The Attorney-General was also a member of the Executive Council, but the Auditor-General held no seat there. The Attorney-General was frequently absent attending to his professional duties, which, owing to the influx of population from Van Diemen's Land, had increased very much. At such a time, the whole brunt of the Government business fell upon the Auditor-General, and he was expected to support the views of the Government, though he was not a member of the Executive. How was he to get these views? As he was not a member of the Executive, information was very sparingly and grudgingly afforded him. Finally, he found his position so anomalous and so painful to himself that he resigned his position as an official nominee. He ceased to hold the office of Auditor-General, and *ipso facto*, a seat in the Legislative Council. This is the explanation of his resignation according to his own account of it. It is true he was accused of unduly interfering with the official functions of others. It is quite possible that this may have been the case; but how could it have been otherwise, considering his peculiar position?

The political career of Mr. Foster, Colonial Secretary, after Mr. Lonsdale, furnishes a third and

³Resignation accepted at a meeting of the Executive Council on October 7th, 1852. ("Minutes of Executive Council," Vol. 1, p. 169).

⁴This applies to each case quoted of official nominees who resigned office.

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striking case. He voluntarily resigned his position on December 9th, 1854, because of the popular feeling manifested against him in connection with the Ballarat riots and the gold licensing policy. He offered his resignation to the Lieut.-Governor, Sir Charles Hotham, in case his retention of office should embarrass the Lieut.-Governor in his administration of the country. At the same time, he stated distinctly that he was not anxious to resign. Sir Charles Hotham accepted the proffered resignation, and stated that he feared "the Queen's Colony would be placed in jeopardy" if he declined the resignation.

In the fourth case to be quoted—that of Mr. Pohlman, an official nominee, and the Chairman of the Quarter Sessions—the political circumstances differ from those of the cases already quoted. In this case the Lieut.-Governor himself really brought about the resignation. Something of Mr. Pohlman's character can also be judged from the following incident:—On July 13th, 1852, Mr. Pohlman voted in support of a motion, which expressed satisfaction at the retirement of Earl Grey, the Secretary of State for the Colonies, from Her Majesty's Councils. The other official nominees voted against the motion. Mr. Pohlman did not like Earl Grey's attitude towards transportation to Van Diemen's Land. He voted according to his convictions, and on this occasion was not called to account by the Lieut.-Governor. At a later date, on October 8th, 1854, the same gentleman was taken to task by the Lieut.-Governor, Sir Charles Hotham, who considered that Mr. Pohlman had not acted in a manner befitting his position as an official nominee. The matter which incurred Sir Charles Hotham's disapprobation was a notice of motion then standing in Mr. Pohlman's name in the proceedings of the Legislative Council. "It was,

Official and Non-official Nominees.

"That an address be presented to His Excellency, praying that he will be pleased to place on the Supplementary Estimates of the year a sum of £50,000, to be placed at the disposal of the Denominational School Board, etc." The Lieut.-Governor sent for Mr. Pohlman, and asked him to allow the notice of motion to lapse. He took exception, he said, to Mr. Pohlman's conduct in giving the notice of motion without consulting the Head or any principal members of the Government. In his letter to Sir Charles Hotham, dated October 9th, 1854, Mr. Pohlman defended his position against the charge made against him. He pointed out what he considered to be the distinction between his position as a non-elective member of the Government, and as Chairman of the Board doing work gratuitously. Under these conditions, he felt compelled to state that, if it were still the Lieut.-Governor's desire that the notice standing in his name should be withdrawn, he would respectfully tender his resignation. He felt that no other course was open to him, if he wished to protect his character as a member of the Legislature. Sir Charles Hotham accepted Mr. Pohlman's resignation on October 11th, and declared his seat vacant.

The fifth case is connected with Mr. Lowe's political career in the New South Wales Legislature. He was a Crown nominee in 1843-4. It is interesting to note that certain features connected with his resignation resemble those of Mr. Pohlman's case. When speaking at Charing Cross on June 1st, 1850, upon the subject of nomineeism in New South Wales, Mr. Lowe candidly stated what his own position as a Crown nominee had been. He found it impossible to fill the position to the satisfaction of his own conscience, and at the same time to the satisfaction of others. When he voted with the Government, he had been dubbed a slave. If at any other time he voted against it, he was taunted with

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being a traitor. He therefore considered the wisest step he could take was to resign his position. That he did.

A final and interesting piece of evidence concerning the nominees in the Victorian Legislature was furnished by Mr. Foster, the Colonial Secretary. On September 1st, 1853, that gentleman made a fine, clear and a broad-minded speech concerning the important task of devising a new Constitution suited to the needs of Victoria. He recognised that the day of the blended House would not now last long; and he openly told the members present what he thought of the introduction of the nominee element into the House. He acknowledged that the nominee members in the Legislature were second to none in point of intelligence and ability. Nevertheless, he knew that none of them would challenge his statement when he said that the introduction of nominees into that House had not been attended with success. A Crown nominee was often viewed with suspicion, and it was undoubtedly true that it required a great deal of moral courage for any man to do his duty as the holder of such a position. He considered the present nominees were deserving of special respect for the patriotism they had shown in coming forward and occupying the positions as they had done.

The New Constitution was proclaimed in Victoria on November 23rd, 1855. It sounded the death knell of nomineeism in that Colony. When the first Parliament of Victoria met on November 21st, 1856, both Upper and Lower Houses were composed of elected members.

CHAPTER VII.

ANALYSIS OF VOTING.

Its Import in the Legislature.

1851-5.

We shall now examine the political attitudes adopted by the different sections in the Legislative Council, that is, by the official nominees, the non-official nominees, and the representatives. A portion of this subject has been touched upon in the previous chapter. We shall now examine it more fully. Did the official nominees consistently support the Government policy? Were the non-official nominees expected to vote with the Government, or were they permitted to vote as they pleased without being called to account for so doing? What also was the political attitude of the representatives? Did the representatives from the urban and from the country districts vote for the people's interests generally, or support in a marked manner the interests of the areas they represented? These are points which we shall now investigate. We shall examine a sufficient number of cases of voting in the House to enable us to arrive at safe general conclusions concerning each type of voter.

Case 1.—On 'November 26th, 1851, before the House went into Committee for the consideration of the Estimate of Ways and Means for the expenditure of 1852, it passed the resolution, "That it be an instruction from this Council to the Committee not to vote any sum from the General Revenue for

¹V. and P., 1851, p. 55.

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the additional expenditure caused by the discovery of gold." The voting upon the resolution was:—

AYES, 18.		NOES, 10.	
Reps.	17	Off.-Nom.	5
Non-Off. Nom. . . .	1	Non-Off. Nom. . . .	4
		Rep.	1
	<hr style="width: 50px; margin: 0 auto;"/> 18		<hr style="width: 50px; margin: 0 auto;"/> 10

As the motion was really a protest against an unfair demand made by the Lieut.-Governor upon the General Revenue, it naturally received a strong representative vote. All the official and four of the non-official nominees voted against the motion, which sought to thwart the Lieut.-Governor's proposed policy, which was for them the policy of the Government. The non-official nominees were frequently men without any particular political bias, and were often chosen because of this fact. Still, as in this case, the Government did not always receive their unanimous support.

²Case 2.—On July 9th, 1852, Mr. Fawcner moved, "That a Committee of nine members be appointed to take the Act of Constitution of the Colony into serious consideration, etc." The voting on this motion was:—

AYES, 8.		NOES, 15.	
Rep.	7	Off.-Nom.	5
Non-Off. Nom. . . .	1	Non-Off. Nom. . . .	1
		³ Squatter Rep.	8
		Rep.	1
	<hr style="width: 50px; margin: 0 auto;"/> 8		<hr style="width: 50px; margin: 0 auto;"/> 15

The official nominees' vote was unanimously against the motion, which really aimed at investigating the efficiency of the existing Government. The squatter representatives voted strongly against the motion, for a change in the Constitution might very possibly have affected the land question. As

³V. and P., 1852-3, Vol. 1, Part 1, p. 31.

⁴See Appendix "A."

Analysis of Voting.

will be seen in Case 5, this was a matter of vital interest to the squatters. The non-official vote was divided; one representative, not of the squatter group, voted with the Government.

'Case 3.—On July 13th, 1852, Mr. Westgarth brought forward a series of resolutions condemning the transportation system to Van Diemen's Land. Two of the resolutions—Nos. 5 and 7—were the subjects of divisions in the House. No. 5 set out, "That this Council regards with satisfaction the recent retirement of the Right Hon. Earl Grey, Secretary of State for the Colonies, etc." Many of the colonists believed that Earl Grey's attitude towards transportation was damaging to the welfare of Australia generally, and to Victoria in particular. The voting on Resolution 5 was:—

AYES, 19.		NOES, 5.	
Off.-Nom.	1	Off. Nom.	4
Non-Off. Nom. . . .	1	Rep.	1
Rep.	17		
	19		5

Four out of the five official nominees voted against the attack made upon the political conduct of Earl Grey. The dissenting official nominee, Mr. Pohlman, voted against the Government, as he did over the *Convicts Prevention Act* on July 13th, 1852, and September 28th, 1853. Mr. Westgarth, in his "Early Melbourne," makes special reference to Mr. Pohlman's opposition to the Government on this occasion. All the representatives, save one, supported the motion. It was to this very period that Mr. H. S. Chapman referred when he said that during the winter of 1852 it was dangerous in Melbourne to be out after dark. This was because of the large number of convicts who had come over from Van Diemen's Land.

*V. and P., 1852-3, Vol. 1, Part 1.
 *Page 147.

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Case 4.—Resolution 7, after expressing sympathy with the colonists of Van Diemen's Land in their efforts to rid themselves of the penal system, stated, "That this Council cannot advert, without the expression of alarm and dissatisfaction, to the course pursued by Sir W. T. Denison, the Lieut.-Governor of the Colony, in his advocacy of the continuance of the system of transportation." This resolution was voted upon as follows:—

AYES, 21.		NOES, 3.	
Off. Nom.	4	Off. Nom.	1
Rep.	17	Non-Off. Nom. . . .	1
		Rep.	1
	—		—
	21		3

Resolution 7 did not involve the land question, so vital to the squatter representatives, nor attack a Minister of the Crown, as in Resolution 5. It did touch, however, upon the matter of the personal safety of the colonists of Victoria, for the perils emanating from the penal system in Van Diemen's Land were at that very time causing them great anxiety. As we have mentioned already, it was not safe to be out in the streets of Melbourne after nightfall, owing to deeds of violence committed by men of the convict class. Hence a strong combination of official nominees and representatives voted in support of the resolutions. Of the three men who opposed the motion, there was one from each type of voter in the House. The official nominee here was the Auditor-General. The heavy voting for the motion was practically a censure passed upon Sir W. T. Denison's views on the question of transportation to Van Diemen's Land.

Case 5.—On July 28th, 1852, the "Rutledge amendment" was put to the House, viz., "That leases be immediately issued to the occupants of Crown lands, to bear the date of March 7th, 1848, in order that the lands may be open for sale, under

*V. and P., 1852-3, Vol. 1, Part 1, p. 75.

Analysis of Voting.

the Orders-in-Council of March 9th, 1847, in quantities to meet the demands of the increasing population of this Colony." This amendment was put forward by Mr. Rutledge, an elective member for Villiers—a 'squatters' area—and opposed Mr. Fawcner's motion, which aimed at extending the area of the Settled Districts of Victoria. The passing of the motion would have brought the Government into opposition with an Imperial Act, as well as with the interests of the squatters. Under the Orders-in-Council of March 9th, 1847, leases could be issued to squatters in the Unsettled Districts for fourteen years, in the Intermediate Districts for eight years, and in the Settled for only one year. By this Order-in-Council, it was possible for the Crown lands of the Colony in the Unsettled Districts to be locked up from the public for a period of fourteen years. The squatters had good legal claims under this Ordinance, but the conditions with regard to land in Victoria had been changed by the gold discovery.

The whole land policy stood in need of a statesmanlike revision, for the discovery of the rich gold-fields in Victoria had created a rising demand for land. Under the Ordinance of 1847, the holder of a lease had the sole right to purchase a portion of the run at £1 per acre. The enhanced value of the land gave undoubted opportunities to leaseholders to make handsome profits upon their purchases. Bearing these facts in mind, we shall now examine the voting upon the "Rutledge amendment." It was as under:—

AYES, 18.		NOES, 9.	
Off. Nom.	5	Rep.	9
Non-Off. Nom. . . .	4		
Electives represent- ing squatters' in- terests	9		
	18		9

¹See "A Short History of Australia," Chapter 16, by Professor E. Scott, University of Melbourne.

²"London Gazette," April 27th, 1847, Section VI.

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The analysis of this voting shows nine representative members in opposition to the amendment, and a unanimous vote by the official and non-official nominees in support of the land policy as determined by the Imperial Parliament. The conspicuous feature in the voting, however, is the siding of all the squatters' representatives with the Government nominees. Their support brought an easy victory to the amendment. We have already seen how vital a matter the land question was to the squatters. No wonder can be expressed, therefore, at the support given to the amendment by those who represented their interests. This coalition, moreover, of the squatters' members with Government nominees, made progress with regard to the waste lands question very difficult. Mr. ⁹Westgarth's "Early Melbourne" furnishes confirmatory evidence on this question, and further helps us to understand the analysis of the voting. It says, "In anything that touched squatting, however, the squatting representatives, led by W. F. Splatt, of the Wimmera, bodily went over, thus giving the Government a small majority, which, as I have already shown in my sketch of Mr. La Trobe, blocked us seriously in dealing with the waste or Crown lands, for the benefit of the inpouring tens of thousands of people."

¹⁰*Case 6.*—On August 5th, 1852, the Chairman of the Committee of the whole reported, "That, in the opinion of the Committee, the salary of the Lieut.-Governor of this Colony is wholly inadequate to support the dignity of his office, and that it ought to be increased." The voting was as follows:—

AYES, 12.		NOES, 8.	
Off. Nom.	4	Rep.	8
Non-Off. Nom.	3		
Squatters' Reps.	4		
Rep.	1		
	12		8

⁹Page 147.

¹⁰V. and P., 1852-3, Vol. 1, Part 1, p. 95.

Analysis of Voting.

Here the question was one affecting the dignity of the Lieut.-Governor's position. Consequently, there was the usual united official vote in support of the motion. All the non-official nominees present voted in like manner. The representative vote was almost twice as strong in the opposition as in the affirmative. The question of the Lieut.-Governor's dignity of office was not so vital to the squatters' representatives as a probable change in the land policy, or an attack on the existing Constitution. Here, only four squatter representatives supported the Government, as against nine in the "Rutledge amendment," about eight days earlier.

"Case 7.—On September 28th, 1853, at the second reading of the *Convicts Prevention Act Amendment Bill*, the most important clause was passed by an overwhelming majority. The voting was as follows:—

AYES, 34.		NOES, 7.	
Union of Un-Off.		Off. Nom.	6
Noms. and Reps. .	33	Rep.	1
Off. Nom.	1		
	<hr/> 34		<hr/> 7

A similar measure had been passed in the previous year, but was disallowed by the Queen, because the Act was said to be an infringement of the Royal prerogative of mercy. Only one representative voted with the six official nominees in defence of the prerogative of the Crown. In this case, as in that of the anti-transportation motion, Mr. Pohlman, an official nominee, joined in the opposition to the Government. The heavy voting for the *Convicts Prevention Act Amendment Bill* on this occasion caused the Government to withdraw all opposition to it at the third reading on October 5th.

"Case 8.—On March 16th, 1855, a motion was made during the discussion of the *Impounding Law Act*

¹¹Parliamentary Debates, "Argus," September 29th, 1853.

¹²V. and P., 1854-5, Vol. 1, Part 1, p. 564.

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Amendment Bill, Clause XX., "That the Chairman report progress, and ask leave to sit again this day month." The voting was:—

AYES, 13.		NOES, 25.	
Off. Nom.	3	¹³ Off. Nom.	5
Reps.	10	Non-Off. Nom. . . .	5
		Reps.	15
	—		—
	13		25

The question here was not a vital one, so even official nominees divided forces, three being for and five against the motion.

From the cases which we have examined, we may safely conclude that the official nominees almost invariably voted in support of Government policy, whether Imperial or purely Victorian. Mr. Polilman's divergences have been noted. The almost unanimous support of official nominees was due, without doubt, to pure loyalty to the Lieut.-Governor, who had nominated them on behalf of the Crown. That such was the case is shown by the following incident: The Auditor-General, in the debate on November 26th, 1851, concerning La Trobe's proposed policy to use the General Revenue for expenses incurred by the gold discovery, stated that he thoroughly understood why the Legislature opposed the Lieut.-Governor's wish. He really made an acknowledgment that they were right. Yet he voted in support of the Lieut.-Governor's proposed policy. Such must have been the case also when the *Convicts Prevention Act* came so frequently before the House in its various readings and re-enactments.

The non-official nominees gave the bulk of their votes in support of the Government policy. From the cases we have cited, we can see that their sup-

¹³Official nominees were increased to nine in number by an Act passed on January 19th, 1853.

Analysis of Voting.

port was sometimes not unanimous. The squatters' representatives, particularly in the early years of the Legislature, voted with the Government when the land policy was assailed, or when attacks were made on the existing system of Government. On other matters of general interest to the colonists, they seem to have voted without any bias. The urban representatives voted, for the most part, with decidedly democratic tendencies, as was evinced in Cases 1 to 7. This was to be expected, seeing that the vast stream of emigrants from the United Kingdom and Europe to Victoria contained thousands of men to whom the democratic opinions so prevalent in Europe in the middle of the nineteenth century were very familiar. The troubles in Ireland, the Chartist movement in England, and the democratic revolutions in France, Germany and Hungary, did much to make not only Victoria, but also the other Australian States, very democratic.

Finally, there was a small percentage of representatives who gave the Government frequent support. Such a one, Mr. Westgarth tells us, was William Campbell, of the Loddon, who, disliking the democratic tendencies of the times, was found a pretty steady supporter of the Government. Because of this, Edward Wilson, then editing the *Argus*, designated him, "The lost sheep of the Loddon."

PART 3.

SOME CONSTITUTIONAL STRUGGLES IN
THE VICTORIAN LEGISLATURE,
1851-6.

CHAPTER VIII.

THE GOLD REVENUE.

The Victorian Legislature's First Constitutional Struggle.

By the *Australian Colonies Government Act*, passed in 1850, the Port Phillip District became the Colony of Victoria on July 1st, 1851. Before separation took place, the growth of the Port Phillip District had been that of a pastoral community steadily increasing in population and prosperity. There can be no doubt that Victoria would have continued to develop in material wealth and population, solely as a result of her flourishing pastoral industries. The year 1851, however, brought another and a mighty force into the life of Victoria. This new power arose because of the discovery of rich gold mines within her borders; and an era of extraordinary wealth and progress commenced in the newly-created Colony. The discovery of gold in New South Wales, by Mr. Hargreaves, at Summer Hill Creek, on February 12th, 1851, caused a great stir in that Colony, and its influence began to be rapidly felt in the province south of the Murray River. A few months later, the goldfields discovered in Victoria completely eclipsed those of New South Wales. Ere long, ships sailed from almost every civilised land with eager searchers after the precious metal in this wonderful gold-mining country. As the population of Victoria increased at an extraordinary rate, the financial burdens of the Colony became greater, and the Lieut.-Governor and his Executive needed far more money to meet the increased cost of administration.

The revenues of the Colony were at that time classed under two heads, the General and the Territorial. The Lieut.-Governor, with the advice and

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consent of the Legislative Council, had the ¹power to make laws enabling them to appropriate the whole of the revenue derived from taxes, duties, rates and imposts, subject to certain restrictions. The fund produced from the sources mentioned constituted the General Revenue, and was used to meet the cost of administering the ²Government of the Colony. Under the *Land Sales Act* of 1842, passed by the Imperial Parliament, ³the funds derived from the sale of Crown lands in the Colony formed the Territorial Revenue. By this Land Act, one-half of the revenue so derived was reserved for the purpose of assisting emigration from the United Kingdom to the Colony where the revenue was raised; the other half, the unappropriated moiety of the Land Fund, was expended on the public service, under the direction of the Executive Council. All revenue from the ⁴licenses issued in connection with gold-mining in Victoria ⁵was paid into the Territorial Revenue. Gold was a droit of the Crown. The Territorial Revenue was, as we have seen, separate from the General Revenue. Its use was definitely fixed by Section XIX. of the *Land Sales Act* of 1842, and could not be appropriated for General Revenue purposes.

When gold-mining in Victoria became a rich and extensive industry, the revenue from the gold licenses increased greatly. The General Revenue, however, could not make any financial demand upon this rich source of revenue.

¹13 and 14 Vict., Cap. 59, Section XIV.

²Under Section XVIII. of the *Land Sales Act* of 1842 ("An Act for regulating the sale of waste lands belonging to the Crown in the Australian Colonies"—5 and 6 Vict., Cap. 36), the expenses of the Survey Department were made a charge on the Territorial revenue.

³Section XIX.—5 and 6 Vict., Cap. 36.

⁴The proclamation issued by the Lieut.-Governor on August 16th, 1851, declared "the rights of the Crown in respect to gold found in its natural place of deposit within the Colony of Victoria." The license to dig for gold was fixed at 30/-. "*Government Gazette*," p. 259.

⁵The right of the Crown to mines royal formed a source of revenue which the Crown could dispose of, owing to its prerogative, as it disposed of the Land revenue before 1842.

The Gold Revenue.

Hence, for the General Revenue to benefit from the Gold Revenue would mean the surrender of the prerogative of the Crown over the latter; to receive aid from the Territorial Revenue would require the sanction of the Home Government. Such then was the general disposition of the financial revenue of the Colony of Victoria in 1851.

When Lieut.-Governor La Trobe formally opened the Victorian Legislature on ⁶November 13th, 1851, he made special reference to the gold discovery in Victoria, the great influx of population, and the temptations held out to subordinate officers of the Government to quit the Civil Service. It had become necessary, he pointed out, to make considerable additions to the police force of the Colony, not only for the sake of assisting to carry out the regulations and to furnish escort for the gold sent to the towns, but also to ensure good order and the due observance of the laws amongst the large populations on the goldfields. In making additions to the police, he had relied, he said, upon the sanction of the Legislative Council and its willingness to make provision for such portions of this expenditure as might justly be held to form a charge upon the ordinary revenue.

When the Legislative Council met on November 26th, 1851, for the consideration of the estimate of Ways and Means for the year 1852, and the supplementary estimate for ⁷1851, it proceeded to consider this question raised by Lieut.-Governor La Trobe. Before the House resolved itself into a Committee of the whole, a ⁸warm discussion took place over the injustice of allowing receipts from the gold to be paid into the Territorial Revenue, while the expenditure caused by the gold discovery in Victoria was to be charged upon the General Revenue. It

⁶V. and P., 1851, Vol. 1, p. 9

⁷Ibid., p. 55.

⁸Parliamentary Debates, "Argus," November 28th, 1851.

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was looked upon as an absurd thing that the gold should disorganise everything, and yet not provide for its own attendant expenditure. Although the Auditor-General, later, cast his vote for the policy proposed by the Lieut.-Governor, he admitted that he could perfectly understand why the House, not having control over the Territorial Revenue, was unwilling to vote one farthing in support of it. Finally, the House, by a majority of eight votes, expressed its wish, "That it be an instruction from this Council to the Committee not to vote from the General Revenue any sum for the additional expenditure caused by the discovery of gold." This gave the Council a decisive victory over the policy set out by the Lieut.-Governor.

Under the circumstances, Lieut.-Governor La Trobe had acted in the only way legally open to him. New conditions, however, had arisen in Victoria, and the Council felt that alterations in the laws relating to the gold and land revenues were needed. Those considerations led to the stand which they made against the proposal to use the General Revenue for burdens caused by the gold discovery. Later in the session, owing to certain representations from the Lieut.-Governor, who pointed out the exigencies of the times, the Legislature granted some measure of financial aid to him. He was forced, however, to draw upon the Territorial Revenue for further assistance, and then report his action to the Home Government.

In the following month, December 16th, 1851, the Victorian Legislature passed a resolution asking the Home Government for the entire management of all revenues, Territorial as well as General, including that derived from mines and minerals. The latter request was equivalent to asking the

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Crown to surrender its prerogative respecting the gold mines; the former, concerning the Territorial Revenue, practically requested the abrogation of the *Land Sales Act* of 1842. Both requests also involved the demand for fuller powers of self-government.

¹⁰Three days after these requests had been made by the Legislature, Lieut.-Governor La Trobe drew the attention of Earl Grey, the Colonial Secretary, to the fact that, as the Legislature had no control over the goldfields, it was scarcely likely to render effective aid in collecting the gold royalty. He pointed out that the Legislature desired that this revenue, together with all the other branches of the Territorial Revenue, should be placed under its control. When La Trobe "wrote to Earl Grey on February 26th, 1852, he related the opposition he had encountered with the Legislative Council. They had imitated, he stated, a course of action which had been followed but a short time before in the New South Wales Legislature. He explained to Earl Grey what steps he had taken to show the Council the extraordinary circumstances which had arisen since the Estimates were framed. This led them, he said, to grant a partial relief; but they had left him to meet, as best he might, the large expenditure incurred from circumstances of absolute necessity. La Trobe pointed out that, while the Council had no control of the Gold revenue, they would not be disposed to make grants from that which was under their power, towards expenditure due to the gold discovery. They maintained that the Territorial revenue, including as it did the Gold revenue, should meet what were really its own obligations. La Trobe then informed the Colonial Secretary that necessity had forced him to use some of the Territorial revenue for administrative purposes. The

¹⁰"Discovery of Gold in Australia," 1851-3, p. 64.

¹¹*Ibid.*, p. 160.

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action of the Legislature had compelled him to do so, he said. He requested to be furnished with instructions as to his future course of action in dealing with the difficult situation which still confronted both himself and his Executive.

On September 7th of the same year, the ¹²reply dated June 2nd which Lieut.-Governor La Trobe received from Sir John Pakington, the Colonial Secretary, was placed before the Legislature. This despatch dealt with the matter at issue between the Legislative Council and the Lieut.-Governor as to the source from which the expenses attendant upon the gold discovery should be met. By this despatch the proceeds arising from the Gold revenue were handed over to the Lieut.-Governor and the Legislative Council, to be appropriated to meet the increased expenditure in the Civil Service. The surrender of this prerogative of the Crown was the subject of much congratulation to the Legislative Council and the colonists of Victoria.

In this constitutional struggle, the first in the political history of the Victorian Legislature, there was no reluctance on the part of the Home Government to yield the Gold revenue. It is quite true that the power of the purse was demonstrated by the action of the Victorian Legislative Council. They had a grievance; therefore they practically withheld supplies, as ¹³far as they had the power, until the injustice complained of had been rectified. A situation, new both socially and politically, had unexpectedly arisen in Victoria in 1851, and Lieut.-Governor La Trobe had to face the situation as best he could. He tried to get aid from the General Revenue, but the decision of the Council barred his

¹²V. and P., 1852-3, Vol. 1, Part 2, p. 720.

¹³Schedule "B" in the Act of 1850 removed the salaries of the important Government officials out of the power of the Legislative Council.

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way. He illegally drew on the Territorial Revenue, because he had no alternative. The Home Government, however, showed prompt and just dealing over the Gold revenue, and granted the request of the Legislature as soon as it was able to do so. This, however, detracted nothing from the fact that the Victorian Legislature had secured an important constitutional triumph.

CHAPTER IX.

THE TERRITORIAL REVENUE.

The Victorian Legislature Seeks Its Full Control.

With regard to the Territorial Revenue derived from the sale of Crown lands under the Act of 1842, a different course was pursued by the Home Government. We shall see how it dealt with this matter, and with the request made by the Victorian Legislature, on December 16th, 1851, that it might control the Territorial Revenue.

¹On June 2nd, 1852, Sir John Pakington replied to the representations made to him by La Trobe concerning the Territorial Revenue. He bore in mind the action of the Legislature on November 26th, and the resolutions passed on December 16th. He pointed out that the appropriation of the Land Fund was fixed by the ²*Land Sales Act* of 1842. The question of altering the policy of that Act would necessitate much deliberation on the part of the Home Government. He quite recognised, at the same time, through how critical a period Victoria was then passing, and desired to avoid all controversial topics. The Home Government, therefore, authorised generally the application, with the advice of the Executive Council, of ³the unappropriated moiety of the Land Fund to the purposes required by the exigencies of the existing crisis. The matter was left, he said, in the hands of the Lieut.-Governor, to be dealt with as his judgment should dictate, subject to the instructions given. Here, again, as in the case of the Gold revenue, the British

¹V. and P., 1852-3, Vol. 1, Part 1, p. 720.

²Vide 5 and 6 Vict., Cap. 36, Section XIX.

³Half of the Territorial revenue derived from the sale of Crown lands in the Colony was devoted to assist emigration from the United Kingdom to the Colony; the other half, called the unappropriated moiety, was expended on the public service of the Colony.

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Government acted promptly, and as generously as was consistent with reasonable caution. To have altered the *Land Sales Act* at once in order to meet Victoria's requests would immediately have affected the application of that Act in the other Australian Colonies. Moreover, there was no guarantee that the gold-mining in Victoria, which had so revolutionised social conditions there, would become a permanent source of great wealth to that province. Still, the relief which was granted was very helpful; the concession granted by the Home Government concerning the Territorial Revenue placed the financial situation of the Legislative Council upon an entirely new footing. It gave the Executive Council the means of meeting, to a great extent, the wishes of the Legislature. 'Lieut.-Governor La Trobe caused £300,000 to be transferred from the unappropriated moiety of the Territorial Revenue, and placed ⁵on the estimated Ways and Means of the General Revenue for 1853. This the Lieut.-Governor, with the advice of his Executive Council, was empowered to do by the terms of Sir John Pakington's despatch, of June 2nd, 1852. Lieut.-Governor La Trobe stated that rather than retain in his own hands the responsibility of appropriating so great an amount to the General revenue, he had resolved to place it at the unfettered disposal of the Legislature.

⁴V. and P., 1852-3, Vol. 1, Part 1, pp. 227-8.

⁵*Estimated Ways and Means for 1853, Showing the Gold and the Allotted Territorial Revenue*

Customs	-	-	-	-	£434,800	0	0
Postage	-	-	-	-	17,900	0	0
Pilotage, Licenses, Fees, Fines, and Miscellaneous Receipts	-	-	-	-	37,900	0	0
Gold Licenses and Leases	-	-	-	-	505,000	0	0
Escort and Treasury Fees	-	-	-	-	63,000	0	0
Export Duty on Gold	-	-	-	-	375,000	0	0
Transfer from the Territorial Revenue	-	-	-	-	300,000	0	0
					£1,733,600	0	0

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He expressed confident anticipation that the liberality and judgment with which the Legislature would meet him would justify the change which he had made with respect to the temporary administration of so large a portion of this revenue. The sum thus allotted was the largest amount which he considered that the primary and other charges upon the Land Fund would prudently allow. In receiving the right from the Lieut.-Governor to determine the detailed expenditure of the grant from the Territorial Revenue, the Legislative Council secured a considerable enlargement of its powers.

Though the Legislature had gained what was really a constitutional victory with regard to the unappropriated moiety of the Land Fund, the majority of its members continued to strive for the full use of that fund. ⁶On December 9th, 1852, after the House had resolved itself into a Committee of the whole for the consideration of the Estimates of 1853, the following resolution was agreed to:—"That in the opinion of the Committee the exigencies of the Colony are so great that the unappropriated moiety of the Land Fund is necessary for the general wants of the Colony." An address conveying this resolution was sent to the Lieut.-Governor. When replying to the Council on the following day, La Trobe stated that, in case it was found that the General Revenue of 1853, with the assistance of the £300,000 transferred, as proposed, from the Territorial Revenue, was insufficient, he would consult his Executive about the matter. He would consider it his duty, he said, under the advice of his Executive Council, to make up the deficiency, as far as possible, from the balance of the unappropriated moiety of the Land Fund. He considered that he was empowered to do this under the recent authority conveyed by Sir John Pakington's

⁶V. and P., 1852-3, Vol. 1, Part 1, p. 304.

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despatch, of June 2nd, 1852. But if the object of the Council, in its present request, was to induce the Lieut.-Governor to pledge himself to an unconditional transfer of the unappropriated moiety of the Land Fund to the General revenue, to be placed on the Ways and Means, he stated that to comply with such a request was quite out of his power. Such a proceeding on his part would not be justified without the express sanction of Her Majesty's Government. He promised that the opinion of the Council should be brought under the notice of the Home Government without unnecessary delay. When the Lieut.-Governor was addressing the Legislature on February 8th, 1853, he stated that he quite agreed with the Council in considering that the whole of the unappropriated moiety of the Land Fund might be expended upon the general wants of the community, in view of the present state and prospects of the Colony. The question of the full control of the unappropriated moiety was not, however, to be the subject of a prolonged dispute.

When Sir John Pakington's despatch, dated December 15th, 1852, arrived, inviting the Victorian Legislature to draw up a new Constitution suited to the needs of the Colony, it was at once recognised that the full control of the Land Fund would pass into the hands of the Legislature within a comparatively short time. On October 23rd, 1855, the repeal of the *Waste Lands Act* of 1842 and the new *Constitution Act* of Victoria were received by Governor Hotham. Both Acts were gazetted on November 23rd of the same year, and the control of the revenue derived from Crown lands in Victoria passed into the hands of the Parliament of that Colony.

¹W. and P., 1852-3, Vol. 1, Part 1, p. 413.

CHAPTER X.

THE WANT OF CONFIDENCE MOTION.

Its Significance.

In the early "fifties," the *Argus* kept a permanent notice at the head of its reports on the proceedings of the Legislative Council. This notice was intended to serve as a caution to those who read the accounts of the Council's decisions, not to consider that they expressed the views of the colonists of Victoria. Since by the Act of 1850, one-third of the Legislature consisted of nominees of the Crown, of whom half were official, and since the Executive was responsible, not to the Legislature, but to the Lieut.-Governor, and because the great mining community did not participate in the franchise, the *Argus* concluded that a Legislature so constituted was simply a mockery of representation. Was there any justification for this conclusion? In the light of the extraordinary advance made by Victoria in wealth and population, because of her rich gold-fields, there was a considerable amount of truth contained in the warning. The Constitution designed to meet the needs of Victoria, at the time of her separation from New South Wales on July 1st. 1851, was by no means suitable for that Colony when it began to be thronged with tens of thousands of miners who had come from almost every civilised country in the world. Social and political conditions had altered very much in Victoria; the Constitution, which was generally suitable in 1851, needed considerable revision by 1853. Definite and sustained efforts to achieve that result would, doubtless, have been made had not the New South Wales Legislature practically saved Victoria the need of a request for a recasting of the Constitution

The Want of Confidence Motion.

in force. The remonstrances from the New South Wales Legislature to the Home Government in 1851 and 1852 accomplished that object. In the meantime, however, Victoria's rapidly increasing population, with the problems attendant upon such an increase, called for the presence of a strong Executive; but at that time the Executive Council was deficient in men of administrative ability. Mr. H. S. Chapman, in his booklet, "Responsible Ministries for the Australian Colonies," published at Hobart Town in 1854, pointed out that, in the midst of difficulties of no ordinary kind owing to the gold discovery, Lieut.-Governor La Trobe possessed the weakest Executive of all the Australian Colonies. Mr. Westgarth also stated, in his book, "Early Melbourne," that when Dr. C. Nicholson (afterwards Sir Charles), the Speaker of the New South Wales Legislative Council, paid a visit to the Victorian Legislature during the early period of its political existence, he expressed rather pronounced opinions upon the apparent lack of political talent in the Council. His adverse criticism was not entirely sweeping; Mr. W. F. Stawell, the Attorney-General, was singled out as a man of fine ability.

Bearing in mind the evidence furnished by these two contemporary writers, we may now turn to examine an interesting political situation and a Parliamentary debate which took place in the Victorian Legislature on November 23rd, 1852. On that day a motion was brought before the Legislature. It ran as follows:—"That the House, occupying the position of an authorised organ for expressing the opinion of the colonists of Victoria, cannot, without being guilty of a dereliction of duty, longer abstain from recording its conviction that the administration of the Executive Government is not characterised by such an amount of intelligence.

¹See "Argus," November 24th and 25th, 1852.

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promptitude, and vigor, as is imperatively called for by the exigencies of the times, and absolutely essential to the peace and welfare of the Colony." The import of this motion was not disguised in any way. It was plainly a "want of confidence" motion against the Executive. At this time only two members of the Executive Council had seats in the Legislature. These were the Colonial Secretary and the Attorney-General. The other two members of the Executive Council, the Treasurer and the Collector of Customs, had not been deemed sufficiently competent by the Lieut.-Governor to undertake Ministerial work in the Legislature. The members of the Executive were, of course, responsible to the Lieut.-Governor, and not to the Legislative Council; all the official nominees in the Legislature owed responsibility to the Lieut.-Governor alone. During the debate which arose after the motion was placed before the House, the view was put forward that the existing state of affairs in the Colony peculiarly demanded a vigorous and capable administration of the public business. It pointed out that an injudicious recognition of claims to ²office, on the ground of past service, had led to several departments of the Public Service being so feebly manned as to diminish the confidence of the colonists in the Government. That the paramount interests of the Colony should be sacrificed to any such secondary considerations was strongly protested against. It was felt that the services of incompetent servants of the Crown could be reasonably rewarded without placing them upon the Executive.

When the Auditor-General rose to speak upon this "want of confidence" motion, he made some valuable comments upon the political situation. He desired that members would consider the effect that

²See chapter on "Executive" for members of first and second Victorian Executive Councils who had held official positions in the Port Phillip District prior to July 1st, 1851.

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this motion would have, that is, taking into consideration the Constitution of the House, and the position it held with regard to the Lieut.-Governor. He pointed out that, when a "want of confidence" motion was brought forward in the Council, and when a similar motion was brought forward in the House of Commons, the results were bound to be different. When such a motion was carried in England, the Government resigned their seats; but in Victoria no such results could follow, and the motion was calculated to produce injurious effects. He recommended the House to investigate the particular points upon which the Government was stated to be weak, and to let the allegations against the public servants go fairly before the country. It would be a pity, the Auditor-General thought, if the House agreed to the terms of the motion, as it would take away a great deal of influence which the Government had, and ought to have, in the Colony. The Chairman of General Sessions spoke in similar terms concerning the motion. He drew attention to the fact that the Government, as then constituted under the 1850 Act, was not a responsible one. The present motion, therefore, he argued, could only be productive of evil by unsettling the minds of the colonists.

The speeches by the Auditor-General and the Chairman of General Sessions pointed out clearly that, even if the motion passed the House, it could serve no practical purpose. There was no such thing as Responsible Government in Victoria under the existing Constitution. Both speeches were constitutionally sound. The Auditor-General was also right in maintaining that, if the Government suffered a defeat with regard to the motion, it would lose a great deal of the influence which it should rightly possess. Such, then, were the arguments advanced by these two speakers to urge the rejection of the motion.

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An amendment, which really went the full length of the motion, was brought before the House by a representative member. When the wording of the motion was put to the House, it was defeated by only two votes. The form of the amendment was supported by the mover alone. There therefore remained no further question before the House, so that the motion was, in effect, lost. Had the amendment been first disposed of, in a plain, straightforward manner, it would have been negatived by a large majority. The mover of the amendment could then have voted for the motion. That would have made the voting equal. There was little doubt in what direction Dr. Palmer, the Speaker, and an elective member, would have cast his vote. All the possibilities of a victory for the "want of confidence" motion were in the House; a complicated system of putting a question to the vote caused the potential victory to be lost. Had the "want of confidence" motion passed in the House, it was, of course, quite open for the Ministerial officers to resign voluntarily, as did Mr. Foster, Colonial Secretary, on December 9th, 1854. He proffered his resignation to Lieut.-Governor Hotham, because he felt that public opinion was completely against him. This action was really an acknowledgment of Ministerial responsibility to public opinion and to the Lieut.-Governor, but not to the Legislature. Mr. Foster explained to Sir Charles Hotham that he had no wish to embarrass him in the work of administration. Something similar could possibly have happened had victory instead of defeat attended the "want of confidence" motion placed before the House on November 23rd, 1852. The heavy voting for the wording of the motion was full of political significance. There was plainly a growing desire to put the affairs of Victoria into the hands of more competent men.

³"Argus," November 25th, 1852.

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The Colony, so wonderfully stimulated by its extraordinary increase in population and in wealth, stood in need of a thoroughly capable Executive to administer its affairs. That was the very least the times demanded, though a complete remodelling of the Constitution was the only real remedy to meet the changed social and political conditions of Victoria. The character of the Executive Council did improve. Between December, 1852, and 1855, the Executive became 'strengthened both in numbers and in administrative ability. No further "want of confidence" motion was made against it. Within one month of the "want of confidence" motion of November 23rd, 1852, Sir John Pakington, the Secretary of State for the Colonies, wrote a despatch to Lieut.-Governor La Trobe, inviting the Legislature of Victoria to draw up a Constitution suited to the needs of their Colony, and based on lines similar to those of the Canadian Constitution. This the Victorian Legislature did, and on November 23rd, 1855, the New Constitution for Victoria was proclaimed. With its proclamation, the era of Responsible Government in Victoria also commenced.

¹See chapter on "Executive."

CHAPTER XI.

"THE CONVICTS' PREVENTION ACT."

The Royal Prerogative Contested—The Triumph of the Legislative Council.

In 1788, vessels conveying convicts from England arrived in Botany Bay, New South Wales; but the place being found unsuitable for a settlement, the prisoners were landed at Port Jackson. These were the first convicts sent to Australia. Van Diemen's Land, a dependency of New South Wales, soon received its quota of criminals, and later acquired an unenviable reputation as a penal settlement. The Port Phillip District was opened up in 1835, and Captain Lonsdale, who took charge of that District, as Police Magistrate, on September 29th, 1836, soon afterwards requested the Governor of New South Wales to send him a number of convicts. These he required to furnish the labor necessary to erect buildings and to cut out the streets of the infant settlement which Sir Richard Bourke, Governor of New South Wales, soon afterwards named Melbourne. In June, 1837, he asked for the assistance of additional convicts. Earlier in the same year, Captain Lonsdale complained that many of the worst characters, who had served their sentences in Van Diemen's Land, resorted to the Port Phillip District. Lonsdale had difficulty enough with those under his authority without these undesirable immigrants from Van Diemen's Land, whose presence presented a difficult problem to him. He requested the Governor at Sydney to send him more police. In addition to the convicts under Lonsdale's authority,

¹"Captain Lonsdale and the Foundation of Melbourne," by Professor E. Scott. "Victorian Historical Magazine," Vol. 4, p. 106.

"The Convicts Prevention Act."

and those who came from Van Diemen's Land after the expiration of their sentences, there were in the Port Phillip District "assigned" convicts, whom squatters and others had brought in as servants.

As far as the Home Government was concerned, no attempt was made to send convicts to Port Phillip until 1849. ²"Arden's Information" stated that a very important feature of the Port Phillip District was the absence of the penal system. It described the District as "emphatically the free province of New South Wales." Certainly, it was not a dumping ground for convicts, as in the case of Sydney and Van Diemen's Land. Though the penal system was not in force in the Port Phillip District, we have seen that many convicts were introduced for the reasons already given. Sir George Gipps, the Governor of New South Wales, when writing to Lord Glenelg in October, 1838, had to acknowledge that the convicts formed a considerable portion of the settlement of Port Phillip, though Lord Glenelg had previously asked him to limit the number of convicts there as much as possible. Sir George Gipps frankly acknowledged that he had not been successful in preventing their being taken there.

³Between 1821 and 1830 emigration from Great Britain to Australia was but a trickle; but early in 1831 provision was made by the Home Government to use part of the Land Fund for the purpose of assisting emigrants to Australia. With the increasing tide of free settlers, a feeling of revulsion against the penal system sprang up in all the Australian Colonies. Strong protests were made to the Home Government, who abandoned transportation to New South Wales in 1840. That system, however, was continued to Van Diemen's Land until 1853, and to

²Arden's "Information Concerning Australia Felix," Chapter 6, p. 81.

³"Colonization of Australia, 1828-42," by Dr. R. C. Mills, pp. 178, 180, 201.

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Norfolk Island until 1855. 'Between 1844 and 1849 the Port Phillip District received prisoners who had undergone reformatory treatment at the Millbank and the Pentonville prisons in England. On being landed at Port Phillip, they were free to go where they chose, but could not return to England until the expiration of their sentences. These "Pentonvillains," as the colonists named them, were regarded by a large section of the colonists as most unwelcome. The reformatory system of Millbank and Pentonville had not turned out the success anticipated, and the British Government determined to renew the transportation system to New South Wales. When, on August 8th, 1849, the "Randolph" brought a shipload of convicts to Melbourne, the colonists refused to allow them to land. The "Hashemy," with a cargo of "Pentonvillains," received similar treatment in the following May, and was compelled to proceed to Sydney. In September of 1849, the "Neptune," with 181 convicts, had been sent from England to Simon's Bay, South Africa, but the colonists there positively refused to allow the convicts to be landed. 'Sir C. P. Lucas, speaking of the Simon's Bay incident, considered that this refusal to receive the convicts was one of the most emphatic pronouncements of Colonial right in advance of Colonial Self-Government.

The colonists of Port Phillip also deserved equal commendation for their resistance against the landing of convicts on their shores in 1849. Though they had successfully prevented their District from becoming a direct receptacle for convicts from England, they were not equally successful in debarring their introduction by indirect means. Escaped convicts, conditionally-pardoned men, ticket-of-leave men, and ex-pirees continued to arrive in the District

E. "A Short History of Australia," Chapter XVII., by Professor Scott.

"Lord Durham's Report," edited by Sir C. P. Lucas, Vol. 1, p. 13.

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from Van Diemen's Land. When the news of the rich goldfields in Victoria reached Van Diemen's Land in 1851, these people came over in ⁶greatly increased numbers. The city of Melbourne and other parts of the Colony became inundated with convicts from Van Diemen's Land. Deeds of violence committed by them were common; the colonists became seriously alarmed. The question of preventing further ingress of convicts into Victoria from Van Diemen's Land was regarded as crucial at the elections for the Legislative Council. Candidates' addresses published in the newspapers almost invariably stated that those seeking election regarded the convict question as one demanding immediate attention. The firm stand taken later by the elected members of the Legislative Council upon the convict question was due largely to the fact that they represented public opinion on this matter. The Lieut.-Governor of Van Diemen's Land, Sir William Denison, placed certain active agents in Victoria for the detection and apprehension of offenders who had been transported to Van Diemen's Land, and were illegally at large in Victoria. A better solution of the problem, however, became most urgent.

In view of the influx of convicts into Victoria, and their growing menace to society, Lieut.-Governor La Trobe ⁷began to prepare a Bill in order to cope with the situation. His intention, however, was anticipated by an elective member bringing in a ⁸Bill for the apprehension of offenders illegally at large, and for their ready transmission to the countries from which they had escaped. To this Bill, afterwards commonly known as the ⁹*Convicts Prevention*

⁶“Discovery of Gold in Australia,” 1851-3, Vol. 1, p. 118; Lieut.-Governor Denison to Earl Grey.

⁷Sess. Papers, 1852-3, Vol. XVIII., p. 566.

⁸A Convicts' Prevention Bill had been brought before the House on July 9th, but was withdrawn.

⁹The title of the Act was, “An Act to facilitate the apprehension and prevent the introduction into the Colony of Victoria of offenders illegally at large.” (Vide Vict. Statutes, Act XIII.)

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Act, La Trobe gave his assent on September 23rd, 1852. The drastic character of this Act may be seen from the following portions of it, which stated:—

Section 1.—That any person who brought by ship to Victoria any runaway convict, or any convict coming in under cover of any conditional pardon, or ticket-of-leave, was liable to a fine of £100 or six months' imprisonment;

Section 2.—That offenders illegally at large could be arrested without warrant;

Section 4.—That male offenders illegally at large were liable to hard labor in irons for three years; females, to imprisonment and hard labor for two years;

Section 5.—That all property found on persons convicted of being illegally at large would be forfeited.

The refusal of the Royal sanction to this Act, on two subsequent occasions, roused public indignation in Victoria, and caused the Legislative Council to act in defiance of the prerogative of the Crown. The *Argus* named the disallowed measure "The Apple of Discord." The *Convicts' Prevention Act* certainly was, as we have seen, stringent in its provisions; and the Lieut.-Governor of Van Diemen's Land urged Sir John Pakington, the Colonial Secretary, to secure its "disallowance. He asked for its rejection, because a convict to whom the Queen had granted a pardon for the offence for which he was transported, conditional on his continued absence from the United Kingdom, was, by this Act, treated as a felon illegally at large. When Lieut.-Governor La Trobe sent the Act home to England, he acknowledged that the zeal and haste of the framers of the Bill had induced them "to "overlook many

¹⁰Sess. Papers, Vol. XVIII, p. 483, October 2nd, 1853.

¹¹*Ibid.*, p. 566, December 2nd, 1852.

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salient principles of constitutional liberty.” He added, however, that he felt it to be his duty, under the extraordinary circumstances and peculiar exigencies of the period, to yield the Royal assent. At the same time, he mentioned that the Bill was for two years only. He also furnished data to support his reason for sanctioning the Bill.

In the following year, the Duke of Newcastle notified Sir William Denison, the Lieut.-Governor, by a despatch dated February 22nd, 1853, that no more convict ships would be sent to Van Diemen’s Land. This was good news, not only for that island, but also for Victoria. A considerable time, however, would elapse before Victoria derived much benefit from the cessation of transportation to Van Diemen’s Land, and in the meantime convicts would continue to pass over to the Colony of Victoria. It was hoped in Victoria that the *Convicts Prevention Act* would relieve the situation, but the Duke of Newcastle’s despatch to Lieut.-Governor La Trobe on April 30th, 1853, brought the unwelcome news that the Act had been disallowed. The Duke of Newcastle stated that he was unable to understand the Act to which La Trobe had assented on September 23rd of the previous year. He could only infer from it that the holder of a conditional pardon was to be adjudged by the courts of Victoria to be an offender illegally at large. This was, he pointed out, a practical interference with the Queen’s prerogative of pardon, and on this ground the Bill was disallowed.

This decision on the part of the Home Government caused the Victorian Legislature, on October 5th, 1853, to pass the *Convicts Prevention Act Amend-*

¹²Sess. Papers, 1852-3, Vol. XVIII., p. 532. Lieut.-Governor La Trobe also notified. Ibid., p. 577.

¹³Sess. Papers, 1852-3, Vol. XVIII., p. 577.

¹⁴Its title after passing the third reading was “An Act to amend the law relating to offenders illegally at large.” (V. and P., 1853-4, Vol. 1, Part 1).

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ment Bill, which was even more stringent than the Act of September 23rd of the previous year. At its second reading, it passed with thirty-four votes in its favor, and only seven votes against it. At the third reading, the Government practically withdrew its opposition; the second reading had shown the temper of the House. The Lieut.-Governor did not assent to the Act, but he promised to withhold the disallowance of the original Act until the British Government had been communicated with. On ¹⁵October 21st, an address to the Queen, setting out the reasons for passing the *Convicts Prevention Act Amendment Bill*, received the approval of the House. The address stated that the Legislature had no desire to impinge upon the Royal prerogative. They, however, viewed with alarm the withholding of the Royal assent to the *Convicts Prevention Act*, because of the great dangers to the colonists from the convict element. The demoralising effect of the influx of convicts from Van Diemen's Land was looked upon as a serious menace to the social life of the colonists of Victoria. The frequency of crime in the Colony was appalling. Hence the Legislature had passed a measure similar to that which had been disallowed.

The re-enactment of the *Convicts Prevention Act* created a crisis in Victorian political history, and tested the unity of the Legislature over this question. Some years before, the New South Wales Legislature had passed the *Lien on Wool Act*, which was assented to by the Governor, but disallowed by Lord Stanley. It was disallowed twice. On the third re-enactment the Minister withdrew his opposition. The *Lien on Wool Act*, however, did not directly involve the prerogative of the Crown, as did the *Convicts Prevention Act*. By passing anew the first Act, the Victorian Legislative Council prac-

¹⁵Ibid., Subdate.

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tically declared that they knew better than Her Majesty's advisers in England what was the best course to pursue, in order to deal effectively with the influx of convicts from Van Diemen's Land into Victoria. There was a determined claim on the part of the Victorian Legislature to control the development of the social condition of the Colony. This determination was the more remarkable, because Responsible Government had not yet been introduced into Victoria. Before the dispute reached its final stages, Lieut.-Governor La Trobe had left Victoria on May 5th, 1854. His successor, Sir Charles Hotham, landed in Melbourne on the 21st of the following month.

Prior to leaving England the new Lieut.-Governor had had two interviews with the Duke of Newcastle concerning the disallowed *Convicts Prevention Act*. He had suggested to the Duke of Newcastle that certain localities in Victoria should be specified, out of which it would be illegal for conditionally-pardoned men to reside, and that every month such men should appear before a magistrate. With these suggestions the Duke of Newcastle concurred, and directed Sir Charles Hotham to use his best endeavors to reconcile the views entertained by the British Government on the subject of conditionally-pardoned men with those held by the Legislature of Victoria. When Sir C. Hotham left England for Victoria, he felt satisfied that he would be able to restore a harmonious feeling between Victoria and the Home Government on this question. As he himself, however, acknowledged later, he had quite miscalculated the feeling of the colonists over this burning question.

On March 15th, 1854, Sir W. Denison, the Lieut.-Governor of Van Diemen's Land, ¹⁶informed the Secretary of State that some conditionally-pardoned

¹⁶See "Argus," October 12th, 1854.

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men had been sent from Victoria, while others he knew of were working on the roads of that Colony. So Sir Charles Hotham received ¹⁷instructions that if he found these complaints by Lieut.-Governor Denison to be true, he was, without delay, to cause free pardons to be issued to such alleged offenders against the Act. The news of this decision by the Home Government caused great dissatisfaction amongst the colonists of Victoria, and the determination to maintain the Bill was plainly shown when the ¹⁸*Convicts Prevention Act* was passed for the third time by the Legislative Council, on November 15th. On the following day, the Lieut.-Governor, Sir Charles Hotham, acting on the advice of the Law Officers, gave his assent to the Bill. His legal advisers stated that as the Act was for one year only, it would not be an infringement on the Royal prerogative. When Sir Charles Hotham ¹⁹wrote to Sir George Grey, on November 18th, concerning this Act, he explained very fully what other considerations beside the advice of the Law Officers had led him to assent to the Act. He wrote, "I have good grounds for believing that, had I refused to affix my signature to the *Influx of Criminals Prevention Bill*, the people would have taken the law into their own hands, and justified it on the grounds that the Government had left them no alternative." Later, on ²⁰April 2nd, 1855, he again wrote to Sir George Grey, and reiterated the views expressed in his despatch of November 18th of the previous year. In one part of his letter, he said, "I found the Colony

¹⁷Ibid., for despatch dated June 24th, 1854.

¹⁸On October 10th, 1854, the Lieut.-Governor transmitted to the Legislature for consideration, "A Bill to prevent the influx of unreformed criminals into Victoria." The Colonial Secretary claimed that the measure was free from the objectionable clauses of the old Bill. A select committee appointed to examine it declined to recommend it to the Legislature. (See Parliamentary Debates, "Argus," October 12th, 1854).

¹⁹Despatch Book, p. 301; Library, Executive Council's Room, Treasury Building.

²⁰Ibid., p. 394.

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united in determination not to sanction the admission of men who had been convicts, and resolved to proceed to any length, in measures of resistance." The real attitude of the colonists on the convict question was thus plainly stated to the Home Government.

When Lord John ²¹Russell, on June 4th, 1855, replied to Governor Hotham's despatch of November 18th, 1854, he dealt with the question of the *Convicts' Prevention Act* in a comprehensive and critical manner. He reviewed the Act to which Lieut.-Governor La Trobe had given his assent on September 23rd, 1852, and pointed out that the despatch, which accompanied the Act assented to, was misleading. He challenged the right of the Victorian Legislature to include "conditionally-pardoned" men amongst those "illegally at large," and drew attention to the fact that the Home Government had a duty to perform to Her Majesty's subjects in maintaining the right of those who had received the Crown's pardon. He then remarked that, if Victoria was still seriously infested with offenders of the convict class, as Sir Charles Hotham's despatch of November 18th had informed him, the Act which the Legislature sought to renew must have failed to be effective. Having discussed the subject at considerable length, he continued, "It is impossible that Her Majesty's advisers can recommend or allow such a law to remain in operation in one of her Colonies. I shall not, however, advise the immediate disallowance of the Act; I shall await your reply to the despatch. . . . I therefore give you notice of the course which Her Majesty's Government feel it incumbent upon them to adopt, in order that measures may be taken for substituting for it an Act free from the serious objections to which it is liable." He suggested that the Legislature should

²¹Despatches from the Secretary of State, Vol. 8, pp. 17-37, 1855; Library, Executive Council's Room, Treasury Building.

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pass a Police or Vagrancy Law to meet the exigencies of the case, and that the convicts and conditionally-pardoned men should be excluded from the goldfields and their neighborhood.

No reply to this despatch was sent to the Colonial Secretary by Sir Charles Hotham before his death, which occurred on December 31st, 1855. It is quite evident from the discussion which took place in the House in January of the following year, when the *Convicts Prevention Act* came up for renewal, that the contents of Lord John Russell's despatch of June 4th, 1855, were known to very few.

We shall now investigate the circumstances connected with the passing of the *Convicts Prevention Act* by the Victorian Legislature, for the fourth time, and note upon what grounds Major-General Macarthur, the officer administering the Government, justified the giving of his assent to it.

On January 11th, 1856, a Bill entitled the *Influx of Criminals Prevention Act Continuation Bill* was introduced by the Chief Secretary, Mr. W. C. Haines, and read in the House for the first time. When he moved the second reading of the Bill on January 15th, he was asked by Mr. Nicholson whether the Government had received any instructions relative to the last *Convicts Prevention Act* sent home. Had the Royal assent been given to it? The Chief Secretary stated in reply that he was not then in a position to say what had been the decision of the Home Government. He, however, promised the House that he would take an early opportunity of ascertaining what the situation was in regard to that Act. A week later, the Chief Secretary explained to the House the exact position of the Act sent home in the previous year for the Royal sanction. The Home Government had not disallowed the Act, but had expressed themselves as not satisfied with it, and were anxious that it should be amended. It was the opinion of the Imperial Parliament that all

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persons holding Her Majesty's conditional pardon, and not residing in one or other of the goldfields, should not be interfered with, and that those of this class who located themselves on the goldfields should be visited with a penalty. The Chief Secretary then proposed the continuation of the Act of November 1854, and pointed out that any measure limited in its operation to the goldfields would have no effect.

Mr. Greeves asked the Chief Secretary if there were any objections to the despatch from the Home Government being produced. In reply, the Chief Secretary said that he did not feel warranted in producing it at the time. The ²²Bill was then read the third time and passed. Thus did the *Convicts Prevention Act* for the fourth time pass in the Legislative Council of Victoria. The Officer administering the Government, Major-General Macarthur, gave his assent to it on February 5th.

What the contents of that despatch were which the Chief Secretary did not divulge to the House, we have already discussed. We can compare his answer to the Legislature with the strongly-expressed sentences in the despatch, and note how guardedly the Chief Secretary worded his reply. It would seem from the Chief Secretary's answer on January 15th, either that he did not know of the despatch or else he had been instructed not to give the information it contained, without the Governor's permission. The tone of Lord Russell's despatch was not calculated to soothe popular feeling, either inside or outside the House, on the question of the *Convicts Prevention Act*. Victoria was still unsettled after the miners' conflict with the Government at Ballarat towards the end of the year 1854, and public feeling had

²²The title of the Act was, “An Act to continue for a limited period an Act, intituled ‘An Act to prevent the influx of criminals into Victoria.’” The Act was to continue in force and effect for one year

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turned rather against the Governor. In addition to these causes of unrest, the colonists were getting very impatient, owing to the delay of the *Constitution Act* which was to bring them Responsible Government. It is quite easy to understand why Governor Hotham would, for a time, prevent the contents of Lord Russell's despatch from becoming generally known.

On April 14th, 1856, Major-General ²³Macarthur wrote to the Colonial Secretary, Mr. Labouchere, informing him that, acting on the advice of the Attorney-General, he had given his assent to the renewal of the *Convicts Prevention Act*, on February 5th. He stated that the reasons which had actuated the late Sir Charles Hotham to assent to the preceding Act, and which had been set out in the despatch of November 18th, 1854, had also greatly influenced his own decision. On the following day, ²⁴April 15th, he addressed a lengthy despatch to Mr. Labouchere on the subject of the Act to which he had given his assent. This despatch was really the official reply to Lord John Russell's despatch of June 4th, 1855, sent to the late Governor Hotham. The opening part of Major-General Macarthur's despatch plainly indicated that he felt considerable difficulty in answering Lord John Russell's communication, especially as he had assented to a measure the renewal of which Lord John Russell had intimated would not be allowed. He pointed out the extraordinary conditions which prevailed in the colony, and stated that the people would not permit unjust enactments to remain long unrepealed or allow an improper or harsh application of them. He explained that a Vagrancy Act or Police regulation, as suggested by Lord John Russell, would not be effectual in a country thinly peopled like Australia,

²³Despatch Book, Vol. 2, p. 631; Executive Council's Room, Treasury Building.

²⁴Ibid., pp. 632-7.

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or prevent convicts from mingling with the population residing at the numerous goldfields of Victoria. He asked the Home Government to consider the justice and propriety of allowing the colony of Victoria to continue, from year to year, to legislate for itself with respect to this exceedingly difficult and most embarrassing question. He acknowledged that the legislation in this particular might be at variance with the general law of the realm, but argued that as necessity and self-protection had been shown to be the causes of the Legislature's action, it might be well to allow the colonists of Victoria to provide for their own safety. He made these remarks, he said, “with great submission,” but he felt that in the responsible position which he occupied, he could neither fulfil his duty to Her Majesty nor to the colonists if he did not present the situation as he had done.

The reply to this despatch which came from the Colonial Office on ²⁵August 8th, 1856, was a very short one, but it was quite definite, and eminently satisfactory to the Legislature and the colonists of Victoria. After acknowledging the receipt of the last *Convicts Prevention Act* to which Major-General Macarthur had given his assent, and noting the reasons he had advanced for so doing, the Colonial Secretary, Mr. Labouchere, stated that, as the Act was only of a temporary nature, it was not considered expedient by the Colonial Office to renew the discussion on the subject.

In not forcing an issue with the Victorian Legislature over the fourth enactment of the *Convicts Prevention Act*, the Home Government again evinced that new spirit in British Colonial Policy already shown to Victoria and New South Wales by the surrender of the Gold revenue, and by the invitations

²⁵Despatches from the Secretary of State, Vol. 9, pp. 599-600; Executive Council's Room, Treasury Building.

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sent out on December 15th, 1852, to New South Wales, Victoria and South Australia, to draw up constitutions suited to their respective needs. Nevertheless the Legislative Council of Victoria achieved a constitutional victory. It gave evidence over the *Convicts Prevention Act* of a steadfastness and tenacity of purpose not unworthy to rank with some of the Parliamentary stands made in England in the seventeenth century against certain prerogatives of the Crown. Sheer necessity and self-defence forced the Victorian Legislature to enact and to re-enact the *Convicts Prevention Act*—a kind of Defence of the Realm Act—in order to protect the colonists against dangers from individuals of the convict class. The fact that Sir Charles Hotham and Major-General Macarthur each assented to the Act, in spite of the Home Government's instructions to the contrary, was proof conclusive not only of the temper of the colonists at that time, but also of the real necessity for the Act itself.

TABLE SHOWING CONVICTS PREVENTION ACTS, 1852-6.

Title	Date of Passing or Assent.	Its Fate.
<p>"An Act to facilitate the apprehension and prevent the introduction into the Colony of Victoria, of offenders illegally at large." It was to take effect from November 1st, and thence for two years. Victorian Statutes Act XIII.</p>	<p>Assented to by Lieut. - Governor La Trobe, Sept. 23rd, 1852.</p>	<p>It was disallowed by the Home Government.</p>
<p>"An Act to amend the Law relating to offenders illegally at large."</p>	<p>Passed third reading, Oct. 5th, 1853.</p>	<p>It was reserved, on Oct. 11th, for the signification of Her Majesty's pleasure. It was not allowed.</p>
<p>"An Act to prevent the influx of criminals into Victoria." It was for one year only. Act III.</p>	<p>Assented to by Sir C. A. Hotham, Nov. 16th, 1854.</p>	<p>It was not actually disallowed by the Home Government. They asked that the objectionable clause in it should be amended.</p>
<p>"An Act to continue for a limited period an Act, entitled 'An Act to prevent the influx of criminals into Victoria.'" It was for one year only. Act III.</p>	<p>Assented to by Major - General Macarthur, Feb. 5th, 1856.</p>	<p>Allowed by the Home Government.</p>

APPENDIX.

- (A) *List of Members of the Legislative Council of Victoria, November 11th, 1851, to March 20th, 1856.*
- (B) *List of Members of the Upper and the Lower House of Victoria's first Parliament, November 21st, 1856.*

VICTORIA.

(A) *List of Members of the Legislative Council, from its first Session after Separation from New South Wales, noting the changes that took place from time to time in the Council.*

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
				1851	
1.	The Hon. Wm. Lonsdale	- Colonial Secretary	-	Oct. 31	- Resigned; appointed Col. Treasurer; succeeded by the Hon. J. F. L. Foster, Esq. (No. 64).
2.	The Hon. Wm. Foster Stawell	- Attorney-General	-	Oct. 31	- Released from office Nov., 1855, and reappointed. (No. 114).
3.	Redmond Barry	- Solicitor-General	-	Oct. 31	- Resigned; appointed one of the Judges of the Supreme Court; succeeded by Edward Eyre Williams, Esq. (No. 33).
4.	Chas. Hotson Edden	- Auditor-General	-	Oct. 31	- Resigned; succeeded by Hugh Culling Eardley Childers, Esq. (No. 37).

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N ^o .	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
5.	Robert Wm. Pohlman	-	-	Oct. 31	- Afterwards appointed Chairman of General Sessions; resigned; succeeded by Chas. Pasley, Capt. R.E. (No. 94).
6.	*Alex. Cunningham Wallace Dunlop	-	-	Oct. 31	- Deceased; succeeded by Lieut.-Col. Joseph Anderson. (No. 34).
7.	*Chas. James Griffith	-	-	Oct. 31	- Resigned; succeeded by John Carre Riddell, Esq. (No. 32); afterwards elected Member for Normanby, &c. (No. 47).
8.	*Wm. Clark Haines	-	-	Oct. 31	- Resigned; succeeded by Archibald Michie, Esq. (No. 38). Mr. Haines afterwards elected Member for County Grant. (No. 50). See also Nos. 96 and 113.
9.	*James Hunter Ross	-	-	Oct. 31	- Resigned; succeeded by Thos. Turner A'Beckett, Esq. (No. 35).
10.	*Andrew Russell	-	-	Oct. 31	-

* Non-official Nominee.

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
11.	The Hon. James Frederick Palmer	-	Normanby, etc.	Sept. 4	- Elected Speaker 11th November, 1851.
12.	Wm. Francis Splatt	-	- Wimmera	Sept. 4	- Resigned 29th April, 1854; succeeded by Wm. Taylor, Esq. (No. 91).
13.	Robt. Turnbull	-	- Gipps' Land	-	Resigned; succeeded by George Ward Cole, Esq. (No. 45).
14.	Francis Murphy	-	- Murray	Sept. 5	- Appointed Chairman of Committees 13th Nov., 1851; resigned; re-elected. (No. 43).
15.	Wm. Campbell	-	- Loddon	Sept. 5	- Resigned 27th May, 1854; succeeded by Thos. Howard Fellows, Esq. (No. 92).
16.	Adolphus Goldsmith	-	- Rippon, etc.	Sept. 6	- Resigned 24th Nov., 1853; succeeded by J. T. Charlton, Esq. (No. 79).
17.	Thos. Wilkin-son	-	- Portland	Sept. 10	-
18.	Wm. Westgarth	-	- Melbourne	Sept. 11	- Resigned; succeeded by John Thos. Smith, Esq. (No. 44).

* Non-official Nominee.

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No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
19.	John O'Shanassy	-	- Melbourne	- Sept. 11	-
20.	John Stewart Johnston	-	- Melbourne	- Sept. 11	- Resigned; succeeded by Augustus Fredk. Adolphus Greeves, Esq. (No. 42).
21.	Thos. Hamilton Osborne	-	- Belfast and Warrnambool	- Sept. 11	- Resigned; succeeded by Lauchlan Mackinnon, Esq. (No. 41).
22.	Chas. Hilton Dight	-	- Nth. Bourke	- Sept. 13	- Deceased; succeeded by Wm. Nicholson, Esq. (No. 39).
23.	John Thomas Smith	-	- Nth. Bourke	- Sept. 13	- Resigned; succeeded by W. B. Burnley, Esq. (No. 62); elected Member for Melbourne. (No 44).
24.	Robt. Robinson	-	- Geelong	- Sept. 13	- Deceased; succeeded by No. 31.
25.	Jas. Ford Strachan	-	- Geelong	- Sept. 13	-
26.	Peter Snodgrass	-	- Kilmore, etc.	- Sept. 13	- Elected Chairman of Committees 31st Aug., 1853, and in every subsequent Session of the Council.
27.	Henry Miller	-	- Sth. Bourke	- Sept. 15	-
28.	Wm. Rutledge	-	- Villiers, etc.	- Sept. 15	- Resigned 8th Feb., 1854; succeeded by Claud Farie. (No. 82).

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
29.	John Henry Mercer	-	- Grant	Sept. 16	- Resigned; succeeded by John Myles, Esq. (No. 40).
30.	John Pascoe Fawkner	-	- Talbot, etc.	Sept. 18	-
31.	Alexander Thompson	-	- Geelong	June 11	- Succeeded R. Robinson, Esq. (No. 24); resigned 4th Aug., 1854; succeeded by James Harrison, Esq. (No. 95).
32.	*John Carrer Riddell	-	-	June 21	- Succeeded Charles James Griffiths, Esq. (No. 7).
33.	Edward Eyre Williams	- Solicitor-General	-	June 23	- Succeeded Redmond Barry (No. 3); resigned and succeeded by Jas. Croke, Esq. (No. 36); appointed one of the Judges of the Supreme Court; succeeded by James Croke, Esq. (No. 36).
34.	*Joseph Anderson	-	-	July 14	- Succeeded A. C. W. Dunlop, Esq. (No. 6).
35.	*Thos. Turner A'Beckett	-	-	July 14	- Succeeded J. H. Ross, Esq. (No. 9).

* Non-official Nominees.

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No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
36.	James Croke	- Solicitor-General	-	July 21	- Succeeded E. E. Williams, Esq. (No. 33); succeeded by Robert Molesworth (No. 80).
37.	Hugh Culling Eardley Childers	- Auditor-General	-	Oct. 26	- Succeeded C. A. Ebdon, Esq.; resigned Dec., 1854; appointed Collector of Customs (No. 77); succeeded by Ed. Grimes, Esq. (No. 78); released from office Nov., 1855; reappointed as Commissioner of Trade and Customs. (No. 117).
38.	*Archibald Michie	-	-	Oct. 26	- Succeeded W. C. Haines. (No. 8); resigned; succeeded by Andrew Aldcorn. (No. 69).
39.	William Nicholson	-	• Nth. Bourke	Oct. 27	- Succeeded C. H. Dight. (No. 22).
40.	John Myles	-	- Grant	Dec. 6	- Succeeded J. H. Mercer, Esq. (No. 29).

* Non-official Nominee.

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
41.	Lauchlan Mackinnon	-	- Belfast and Warrnambool	- Dec. 21	- Succeeded T. H. Osborne, Esq. (No. 21); resigned; succeeded by Frederick Perkins Stevens. (No. 46).
42.	Augustus Fredk. Adolphus Greeves	-	- Melbourne	- Jan. 11	- Succeeded J. S. Johnston. (No. 20).
43.	Francis Murphy	-	- Murray	- April 6	- Re-elected. See No. 14.
44.	John Thomas Smith	-	- Melbourne	- May 26	- Resigned seat for North Bourke (No. 23), and succeeded W. Westgarth, Esq. (No. 18), and was succeeded at North Bourke by W. B. Burnley, Esq. (No. 62).
45.	George Ward Cole	-	- Gipps' Land	- May 31	- Succeeded R. Turnbull, Esq. (No. 13); resigned 31st May, 1855; succeeded by John King, Esq. (No. 100).
46.	Frederick Perkins Stevens	-	- Belfast and Warrnambool	- May 31	- Succeeded Lauchlan Mackinnon (No. 41); resigned 18th Feb., 1854; succeeded by Francis Edis Beaver, Esq. (No. 81).

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No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
47.	Charles James Griffiths	-	- Normanby, etc.	- June 1	- Returned on the increase of the number of Members of Council (see No. 7); resigned 12th April, 1854; re-elected 20th June, 1854. (No. 85).
48.	George Winter	-	- Villiers, etc.	- June 2	- Returned on the increase of the number of Members of the Council; resigned 14th Aug., 1854; succeeded by William Forlonge, Esq. (No. 93).
49.	Matthew Hervey	-	- Murray	- June 3	- Returned on the increase of the number of Members of Council.
50.	William Clark Haines	-	- Grant	- June 6	- Returned on the increase of the number of Members of Council (see No. 8); resigned 12th Dec., 1854; succeeded by Horatio Spencer Wills, Esq. (No. 98).
51.	George Annand	-	- Nth. Bourke	- June 6	- Returned on the increase of the number of Members of Council; resigned 30th July, 1855; succeeded by Thomas Embling, Esq. (No. 101).

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
52.	Mark Nicholson	-	- Belfast and Warrnambool	- June 7	- Returned on the increase of the number of Members of Council; resigned 5th May, 1854; succeeded by G. S. W. Horne, Esq. (No. 89).
53.	James Murphy	-	- Melbourne	- June 8	- Returned on the increase of the number of Members of Council; resigned 24th Sept., 1855; succeeded by Thomas Rae, Esq. (No. 102).
54.	John Hodgson	-	- Melbourne	- June 8	- Returned on the increase of number of Members of Council.
55.	Henry Langlands	-	- Melbourne	- June 8	- Returned on the increase of number of Members of Council, and unseated by a resolution and report of Committee of Elections and Qualifications, 18th Oct., 1853; replaced by Frederick James Sargood, Esq. (No. 75).

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No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
56.	James Cowie	-	- Geelong	- June 9	- Returned on the increase of the number of Members of Council; resigned 1st May, 1854; succeeded by Alexander Fyfe, Esq. (No. 84).
57.	Patrick O'Brien	-	- Kilmore, etc.	- June 9	- Returned on the increase of the number of Members of Council.
58.	John Dane	-	- Sth. Bourke	- June 10	- Returned on the increase of the number of Members of Council; resigned 1st Nov., 1854; succeeded by H. S. Chapman (No. 99).
59.	John Goodman	-	- Loddon	- June 14	- Returned on the increase of the number of Members of Council.
60.	Wm. Thomas Mollison	-	- Talbot, etc.	- June 14	- Returned on the increase of the number of Members of Council.
61.	James Thomson	-	- Ripon, etc.	- June 15	- Returned on the increase of the number of Members of Council; resigned 26th Feb., 1854; succeeded by C. Campbell, Esq. (No. 83).

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
62.	William Bust Burnley	-	- Nth. Bourke	- June 28	- Succeeded J. T. Smith, Esq. (No. 44).
63.	James Henty	-	- Portland	- July 5	- Returned on the increase of the number of Members of Council.
64.	The Hon. John Fitzgerald Leslie Forster	- Colonial Secretary	-	- Aug. 29	- Succeeded the Hon. Wm. Lonsdale, Esq. (No. 1); resigned; succeeded by W. C. Haines, Esq. (No. 96).
65.	The Hon. James Horatio Nelson Cassell	- Collector of Customs	-	- Aug. 29	- Nominated on the increase of number of Members of Council; deceased; succeeded by the Hon. H. C. E. Childers, Esq., Collector of Customs (No. 77).
66.	Andrew Clarke	- Surveyor-General	-	- Aug. 29	- Nominated on the increase of number of Members of Council; released from office Nov., 1855; reappointed. (No. 118).

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No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
67.	*James Graham	-	-	- Aug. 29	- Nominated on the increase of the number of Members of Council; re-signed 21st July, 1854; succeeded by Donald Kennedy, Esq. (No. 88).
68.	*Wm. Highett	-	-	-	- Nominated on the increase of the number of Members of Council.
69.	*Andrew Aldcorn, M.D.	-	-	- Aug. 29	- Succeeded Archibald Michie (No. 38); resigned 24th Nov., 1853; succeeded by James McCulloch. (No. 86).
70.	Wm. Henry Fancourt Mitchell	- Chief Commr. of Police	-	- Aug. 29	- Nominated on the increase of the number of Members of Council; resigned Nov., 1853; succeeded by Charles MacMahon. (No. 76).
71.	Wm. Henry Wright	- Chief Commr. of Goldfields	-	- Aug. 29	- Nominated on the increase of the number of Members of Council.

* Non-official Nominee.

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
72.	*Edward Stone Parker	-	-	Aug. 29	- Nominated on the increase of the number of Members of Council; resigned 1st Aug., 1854; succeeded by Alfred Ross. (No. 90).
73.	*Edward Nucella Emmett	-	-	Aug. 29	- Nominated on the increase of the number of Members of Council; resigned; succeeded by Andrew Halley Knight. (No. 74).
74.	*Andrew Halley Knight	-	-	Sept. 6	- Succeeded E. N. Emmett. (No. 73); resigned 8th March, 1854; succeeded by Charles Bradshaw. (No. 87).
75.	Frederick James Sargood	-	- Melbourne	Oct. 18	- Seated by resolution and report of the Committee of Elections and Qualifications in place of Henry Langlands. (No. 55).
76.	James MacMahon	- Asst. Commr. of Police	-	Nov. 25	- Succeeded W. H. F. Mitchell, Esq. (No. 70).

* Non-official Nominees

Constitutional Development of Victoria.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
77.	The Hon. Hugh Culling Eardley Childers	- Collector of Customs	-	- Dec. 5	- Succeeded the Hon. J. H. N. Cassell, Esq. (No. 65); released from office Nov., 1855. (No. 117).
78.	Edward Grimes	- Auditor-General	-	- Dec. 8	- Succeeded H. C. E. Childers, Esq. (No. 37).
79.	John Thompson Charlton	-	- Ripon, etc.	- Dec. 12	- Succeeded A. Goldsmith, Esq. (No. 16); resigned 18th Sept., 1854; succeeded by R. W. Pohlman, Esq. (No. 97). See No. 5.
80.	Robert Molesworth	- Act. Solicitor-General	-	1854 - Jan. 17	- Succeeded James Croke. (No. 36); resigned Nov., 1855. (See No. 119).
81.	Francis Edis Beaver	-	- Belfast and Warrnambool	- Mar. 14	- Succeeded F. P. Stevens, Esq. (No. 46).
82.	Claud Farie	-	- Villiers and Heytesbury	- Mar. 30	- Succeeded Wm. Rutledge (No. 28); resigned 16th Oct., 1855; succeeded by James M. Knight, Esq. (No. 112).
83.	Colin Campbell	-	- Ripon, etc.	- May 10	- Succeeded J. Thompson (No. 61).
84.	Alexander Fyfe	-	- Geelong	- June 22	- Succeeded James Cowie (No. 56).

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
85.	Chas. James Griffith	-	- Normanby etc.	- June 20	- See No. 47.
86.	*James McCulloch	-	-	- Aug. 1	- Succeeded Andrew Ald-corn, M.D. (No. 69).
87.	*Chas. Bradshaw	-	-	- Aug. 1	- Succeeded A. H. Knight, Esq. (No. 74).
88.	*Donald Kennedy	-	-	- Aug. 1	- Succeeded James Graham (No. 67).
89.	George Samuel Wegg Horne	-	- Belfast and Warrnambool	- Aug. 3	- Succeeded Mark Nicholson, Esq. (No. 52).
90.	*Alfred Ross	-	-	- Aug. 12	- Succeeded E. S. Parker. (No. 72.)
91.	William Taylor	-	- The Wimmera	- Aug. 16	- Succeeded W. F. Splatt. (No. 12.)
92.	Thomas Howard Fellows	-	- The Loddon	- Sept. 11	- Succeeded W. Campbell. (No. 15.)
93.	William Forlonge	-	- Villiers and Heytesbury	- Sept. 21	- Succeeded by George Winter, Esq. (No. 48.)
94.	Chas. Pasley, Captain, R.E.	- Colonial Engineer	-	- Oct. 16	- Succeeded R. W. Pohlman, Esq. (No. 5); released from office Nov., 1855. (See No. 116.)
95.	James Harrison	-	- Geelong	- Oct. 31	- Succeeded A. Thomson, Esq. (No. 31.)

* Non-official Nominee.

Constitutional Development of Victoria.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
96.	The Hon. Wm. Clark Haines	- Colonial Secretary	-	Dec. 12	- Succeeded The Hon. J. L. F. Foster, Esq. (No. 64); released from office Nov., 1855. (See No. 113.)
97.	Robert Williams Pohlman	-	- Ripon, etc.	Dec. 14	- Succeeded J. T. Charlton. (No. 79.) (See No. 5.)
98.	Horatio Spencer Wills	-	- Grant	1855 Jan. 10	- Succeeded The Hon. W. C. Haines, Esq. (No. 96.)
99.	Henry Samuel Chapman	-	- Sth. Bourke	Feb. 13	- Succeeded John Dane. (No. 58.)
100.	John King	-	- Gipps' Land	July 10	- Succeeded George Ward Cole. (No. 45.)
101.	Thomas Embling	-	- Nth. Bourke	Sept. 13	- Succeeded George Annand. (No. 51.)
102.	Thomas Rae	-	- Melbourne	Nov. 2	- Succeeded James Murphy. (No. 53.)
103.	*John Downes Owens	-	-	Nov. 5	-
104.	Peter Lalor	-	- Ballarat	Nov. 10	-
105.	John Basson Humffray	-	- Ballarat	Nov. 10	-
106.	Duncan Longden	-	- Avoca	Nov. 10	-
107.	Vincent Pyke	-	- Castlemaine	Nov. 15	-

* Non-official Nominee.

Appendix.

No.	Members' Names.	Official Nominee.	Places Represented.	When Nominated or Elected.	Remarks.
108.	James Atkin Wheeler	-	- Castlemaine	- Nov. 15	-
109.	Daniel Cameron	-	- Ovens	- Nov. 15	-
110.	James McPherson Grant	-	- Sandhurst	- Nov. 15	-
111.	Robert Benson	-	- Sandhurst	- Nov. 15	-
112.	James Mylne Knight	-	- Villiers and Sandhurst	- Nov. 15	- Succeeded by Claud Farie. (No. 82.)
113.	The Hon. Wm. Clark Haines	- Chief Secretary	-	- Nov. 28	- (See No. 96.)
114.	The Hon. Wm. Foster Stawell	- Attorney-General	-	- Nov. 28	- (See No. 2.)
115.	The Hon. Charles Sladen	- Treasurer	-	- Nov. 28	-
116.	The Hon. Chas. Pasley, Captain, R.E.	- Commr. of Public Works	-	- Nov. 28	- (See No. 94.)
117.	The Hon. Hugh Culling Eardley Childers	- Commr. of Trade and Customs	-	-	- (See No. 77.)
118.	The Hon. Andrew Clarke, Captain, R.E.	- Surveyor-General	-	- Nov. 28	- (See No. 66.)
119.	Robert Molesworth	- Solicitor-General	-	- Nov. 28	- (See No. 80.)

Constitutional Development of Victoria.

(B). VICTORIA'S FIRST PARLIAMENT.

Members of the Legislative Council.

- Central Province*—John Hodgson; John Pascoe Fawcner; Henry Miller; John Hood; Nehemiah Guthridge.
South Province—Donald Kennedy; Thomas Herbert Power; William John Turner Clarke; Thomas McCombie; John Barter Bennett.
South-Western Province—James Ford Strachan; Robert Cuthbertson Hope; James Henty; William Roope; James Cowie.
Western Province—Stephen George Henty; Andrew Rose Cruikshank; Daniel Joseph Tierney; James Frederick Palmer; Charles Vaughan.
North-Western Province—John Allan; Dennis Patrick Keogh; George Urquart; John Hunter Patterson; William Henry Fancourt Mitchell.
Eastern Province—Matthew Hervey; James Stewart; Robert Thompson; William Kaye; Benjamin Williams.

Members of the Legislative Assembly.

- Melbourne*—David Moore; Archibald Michie; William Foster Stawell; John Thomas Smith; John O'Shanassy.
St. Kilda—Frederick James Sargood; Thomas Howard Fellows.
Collingwood—George Harker; Thomas Embling.
South Melbourne—Andrew Clarke.
Richmond—George Samuel Evans; Daniel Stodhart Campbell.
Williamstown—John Leslie Vesey Fitzgerald Foster.
Brighton—Jonathan Binns Were.
Geelong—Alexander Fyfe; Charles Sladen; Charles Read; John Henry Brooke.
Portland—Hugh Culling Eardley Childers; Daniel Abraham Hughes.
Belfast—Francis Edis Beaver.
Warrnambool—George Samuel Wegge Horne.
Colac—Andrew Rutherford.
Kilmore—John O'Shanassy.
Kyneton Boroughs—George Walter Johnston.

Appendix.

- Murray Boroughs*—Francis Murphy.
Alberton—James Davis.
Castlemaine Boroughs—Alexander Stenson Palmer; Vincent Pyke.
Sandhurst Boroughs—James Macpherson Grant.
North Grant—James Basson Humffray.
North Grenville—Peter Lalor.
Ovens—Daniel Cameron.
Rodney—John Dunstan Baragwanath.
Loddon—John Downes Owens; Ebenezer Syme.
Talbot—Butler Cole Aspinwall; David Blair.
East Bourke—Robert Bennett; Augustus Frederick Adolphus Greeves.
West Bourke—Patrick Phelan; Robert McDougall.
South Bourke—Charles Pasley; Patrick O'Brien.
South Grant—William Clark Haines; Horatio Spencer Wills; John Myles.
Evelyn and Mornington—William Acland Douglas Anderson.
Anglesley—Peter Snodgrass.
Dundas and Follett—Charles James Griffith.
Normanby—Edward Henty.
Villiers and Heytesbury—Charles Gavan Duffy; William Rutledge.
Polwarth, Ripon, Hampden and South Grenville—Jeremiah George Ware; Colin Campbell.
The Murray—John Goodman; Travers Adamson.
Gipps' Land—John King.

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